

SEVENTIETH DAY
(Monday, May 22, 1989)

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

A quorum was announced present.

Senate Doorkeeper Jim Morris offered the invocation as follows:

Our Father, the calendar this morning reminds us that time is short, and many of the needs of the different constituencies are pending, not for lack of study or deliberation, but only the final compromise.

Provide to these Members Your special counsel and renewed energy so that their efforts may be acknowledged and rewarded. Thank You for the dedication and determination of each one.

In Your name we pray. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of Saturday, May 20, 1989, was dispensed with and the Journal was approved.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolutions:

S.C.R. 25	S.B. 606	S.B. 1800	H.B. 1106
S.C.R. 118	S.B. 652	H.C.R. 13	H.B. 1108
S.C.R. 140	S.B. 723	H.C.R. 209	H.B. 1350
S.C.R. 154	S.B. 737	H.C.R. 277	H.B. 1379
S.J.R. 44	S.B. 771	H.B. 85	H.B. 1441
S.B. 49	S.B. 936	H.B. 200	H.B. 1492
S.B. 58	S.B. 1028	H.B. 228	H.B. 1495
S.B. 188	S.B. 1031	H.B. 383	H.B. 1555
S.B. 446	S.B. 1289	H.B. 488	H.B. 1878
S.B. 497	S.B. 1461	H.B. 780	H.B. 2231
S.B. 508	S.B. 1675	H.B. 822	H.B. 2802
S.B. 589			

REPORTS OF STANDING COMMITTEES

Senator Sims submitted the following report for the Committee on Administration:

C.S.S.C.R. 165

Senator Montford submitted the following report for the Committee on State Affairs:

H.B. 164
H.B. 4
C.S.S.B. 1190

Senator Harris submitted the following report for the Committee on Economic Development:

H.B. 608
H.B. 2606
H.B. 2586
H.B. 1941
H.B. 180 (Amended)
H.B. 925 (Amended)
H.B. 1450 (Amended)

Senator Caperton submitted the following report for the Committee on Finance:

C.S.S.B. 1836

Senator Parmer submitted the following report for the Committee on Intergovernmental Relations:

H.B. 1977
H.B. 1405
H.B. 3158
H.B. 2252
H.B. 2476
H.B. 1446
H.B. 2501
H.B. 3113
C.S.H.B. 1834
C.S.S.B. 1787

Senator Sims submitted the following report for the Committee on Administration:

H.C.R. 240
S.R. 687

Senator Parker submitted the following report for the Committee on Education:

S.C.R. 153

SENATE RESOLUTION ON FIRST READING

On motion of Senator Uribe and by unanimous consent, the following resolution was introduced, read first time and referred to the Committee indicated:

S.R. 699 by Uribe Administration
Directing the Natural Resources Subcommittee on Water to conduct an interim study on maquiladora expansion and development and its impact on the environment and ecology of the border infrastructure.

(Senator Brooks in Chair)

HOUSE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

H.J.R. 101, To Committee on Criminal Justice.
H.C.R. 146, To Committee on Jurisprudence.
H.B. 45, To Committee on Criminal Justice.
H.B. 59, To Committee on Intergovernmental Relations.

H.B. 151, To Committee on State Affairs.
H.B. 186, To Committee on Health and Human Services.
H.B. 188, To Committee on Health and Human Services.
H.B. 221, To Committee on Economic Development.
H.B. 319, To Committee on Health and Human Services.
H.B. 405, To Committee on Jurisprudence.
H.B. 457, To Committee on Intergovernmental Relations.
H.B. 590, To Committee on Finance.
H.B. 775, To Committee on Jurisprudence.
H.B. 785, To Committee on Health and Human Services.
H.B. 828, To Committee on Criminal Justice.
H.B. 854, To Committee on Education.
H.B. 878, To Committee on Health and Human Services.
H.B. 884, To Committee on Education.
H.B. 912, To Committee on State Affairs.
H.B. 914, To Committee on Economic Development.
H.B. 969, To Committee on Education.
H.B. 1114, To Committee on Jurisprudence.
H.B. 1254, To Committee on Intergovernmental Relations.
H.B. 1270, To Committee on Finance.
H.B. 1299, To Committee on Health and Human Services.
H.B. 1383, To Committee on Economic Development.
H.B. 1423, To Committee on Intergovernmental Relations.
H.B. 1425, To Committee on Finance.
H.B. 1626, To Committee on Jurisprudence.
H.B. 1654, To Committee on State Affairs.
H.B. 1757, To Committee on Natural Resources.
H.B. 1758, To Committee on Jurisprudence.
H.B. 1759, To Committee on Intergovernmental Relations.
H.B. 1760, To Committee on Intergovernmental Relations.
H.B. 1770, To Committee on Health and Human Services.
H.B. 1801, To Committee on Intergovernmental Relations.
H.B. 1803, To Committee on Intergovernmental Relations.
H.B. 1808, To Committee on Natural Resources.
H.B. 1839, To Committee on State Affairs.
H.B. 1849, To Committee on Health and Human Services.
H.B. 1926, To Committee on Jurisprudence.
H.B. 1948, To Committee on Finance.
H.B. 2046, To Committee on State Affairs.
H.B. 2072, To Committee on Criminal Justice.
H.B. 2132, To Committee on Finance.
H.B. 2140, To Committee on State Affairs.
H.B. 2169, To Committee on Finance.
H.B. 2185, To Committee on Education.
H.B. 2211, To Committee on Finance.
H.B. 2277, To Committee on Finance.
H.B. 2303, To Committee on Natural Resources.
H.B. 2336, To Committee on State Affairs.
H.B. 2356, To Committee on Health and Human Services.
H.B. 2405, To Committee on Criminal Justice.
H.B. 2420, To Committee on State Affairs.
H.B. 2470, To Committee on State Affairs.
H.B. 2478, To Committee on Intergovernmental Relations.

H.B. 2481, To Committee on State Affairs.
H.B. 2482, To Committee on State Affairs.
H.B. 2485, To Committee on Intergovernmental Relations.
H.B. 2498, To Committee on Natural Resources.
H.B. 2541, To Committee on Health and Human Services.
H.B. 2575, To Committee on Finance.
H.B. 2588, To Committee on Intergovernmental Relations.
H.B. 2629, To Committee on State Affairs.
H.B. 2638, To Committee on Economic Development.
H.B. 2705, To Committee on Finance.
H.B. 2786, To Committee on Health and Human Services.
H.B. 2791, To Committee on Education.
H.B. 2840, To Committee on Economic Development.
H.B. 2932, To Committee on Economic Development.
H.B. 3085, To Committee on Natural Resources.
H.B. 3088, To Committee on Natural Resources.
H.B. 3101, To Committee on State Affairs.
H.B. 3126, To Committee on Natural Resources.
H.B. 3146, To Committee on Finance.
H.B. 3151, To Committee on Intergovernmental Relations.
H.B. 3153, To Committee on Jurisprudence.
H.B. 3155, To Committee on Natural Resources.
H.B. 3156, To Committee on Natural Resources.
H.B. 3160, To Committee on Intergovernmental Relations.
H.B. 3173, To Committee on Intergovernmental Relations.
H.B. 3174, To Committee on Health and Human Services.
H.B. 3178, To Committee on Natural Resources.
H.B. 3179, To Committee on Natural Resources.
H.B. 3182, To Committee on Natural Resources.
H.B. 3189, To Committee on Jurisprudence.
H.B. 3190, To Committee on Health and Human Services.
H.B. 3196, To Committee on Intergovernmental Relations.

CO-AUTHOR OF SENATE BILL 1379

On motion of Senator Parmer and by unanimous consent, Senator Lyon will be shown as Co-author of **S.B. 1379**.

CO-SPONSOR OF HOUSE BILL 2280

On motion of Senator Uribe and by unanimous consent, Senator Zaffirini will be shown as Co-sponsor of **H.B. 2280**.

CO-SPONSOR OF HOUSE BILL 2819

On motion of Senator Brown and by unanimous consent, Senator Armbrister will be shown as Co-sponsor of **H.B. 2819**.

SENATE RESOLUTION 700

Senator Truan offered the following resolution:

S.R. 700, Commending Dr. Richard O. Albert of Alice, Texas, noted conservationist, environmentalist, physician and surgeon for his lifetime of service to the people of Texas and to his country.

The resolution was read and was adopted viva voce vote.

GUESTS PRESENTED

Senator Truan and Representative Glossbrenner escorted Dr. Albert, his wife, Dr. Margaret F. Land; Dr. Thomas R. Albert and Dr. David C. Albert to the President's Rostrum for a presentation of S.R. 700 to Dr. Richard O. Albert.

The Senate welcomed this distinguished gentleman and his party.

GUEST PRESENTED

Senator Carriker was recognized and presented Dr. E. F. Watson of Iowa Park.

Dr. Watson, participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, was welcomed by the Senate and received an expression of gratitude for his service today.

SENATE RESOLUTION 665

Senator Sims offered the following resolution:

WHEREAS, Wandeen Sakewitz is celebrating her 50th birthday on May 22, 1989, and this important event is truly worthy of legislative recognition; and

WHEREAS, Wandeen is the hard-working, dedicated administrative assistant to Senator Bill Sims and has been a vital part of that office since 1983; and

WHEREAS, On her 50th birthday she will have served the State of Texas for 27 years, 4 months, and 23 days; and

WHEREAS, Her service in the Senate dates back to January 1, 1979, when she joined the office staff of Senator Pete Snelson; and

WHEREAS, She started in the House as an inexperienced 18-year-old in October of 1957; and

WHEREAS, Many years ago her boss (a distinguished gentleman who cannot be named) asked her to type a bill; at this point in her career she was having fun, not working; ingenious person that she is, she hired someone to type the bill and had the bill for these services sent to her boss; what a gal—although that is not what her boss called her; and

WHEREAS, Oh yes, movies were good in the afternoons during long drawn out afternoon sessions; what fun it was for her to walk to the movie and sneak back into work all revived and fresh from a John Wayne flick; and

WHEREAS, Voluminous petticoats were her style back in the good ole days around the Capitol; she was pretty cute with her pixie haircut and endearing ways; and

WHEREAS, One of the members she worked for hired someone to help her with all her difficult work; she snapped right on to this idea; she and the girl traded days—one worked Monday, the other Tuesday, et cetera; when questioned about this, one or the other had stepped out of the office for awhile; talk about a three-day work week, she was ahead of her time; and

WHEREAS, Lest we forget—woe the boss who left for home on Thursday; she thought she was entitled to the same treatment and, as soon as he left, she made her escape; and

WHEREAS, Oh yes, she loved her birthday; when a boss asked a coworker what she might want for her birthday—there was no might about it, she got into specifics; and

WHEREAS, Wandeen literally runs Senator Sims's office and has taken to grading the Senator on the neatness of his desk; she has been known to give him an "F" if it is a wee bit messy; and

WHEREAS, Wildflowers are her love and she decorates the office with them; she picks them herself and brings them in whenever she finds some in bloom; and

WHEREAS, Known to some as Wong Ding, this vibrant lady is an inspiration to others, full of life, and very special to those with whom she works; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 71st Legislature, hereby extend hearty congratulations to Wandeen Sakewitz on attaining this impressive milestone in her life and wish her a most happy day; and, be it further

RESOLVED, That a copy of this Resolution be prepared for her as a memento of this special day and as a token of the highest esteem and appreciation of the Texas Senate.

The resolution was read and was adopted viva voce vote.

GUESTS PRESENTED

Senator Sims introduced Wandeen and the members of her family to the Senate.

She received an expression of congratulations on this special birthday.

MESSAGE FROM THE HOUSE

House Chamber
May 22, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.J.R. 36, Proposing a Constitutional amendment to provide for the abolition of the office of county treasurer in Webb County.

H.B. 44, Relating to the movement of traffic on multiple-laned roadways.

H.B. 1689, Making appropriations for and directing payment of certain miscellaneous claims and judgments out of funds designated herein; requiring approval of the claims in the manner specified in this Act before payment is made.

H.B. 2803, Relating to creation of the Texas capital access fund and the economic development of the State.

H.B. 2864, Relating to the creation and powers of reinvestment zones and to property taxes imposed by a county or school district in a reinvestment zone created for tax increment financing.

S.B. 650, Relating to technology and telecommunications in public education.
(As substituted and amended)

S.B. 693, Relating to the manner in which certain businesses may claim a sales and use tax exemption for exported items.

S.B. 1117, Relating to the use of Texas agricultural water conservation bonds.
(As substituted and amended)

S.B. 1363, Relating to the eligibility of certain counties to impose a tax on occupancy in a hotel, motel or similar facility. (As substituted)

S.B. 1518, Relating to the exemption of municipal solid waste management facilities and certain solid and hazardous waste management facilities from review by the Texas Air Control Board.

S.B. 1727, Relating to the creation, administration, powers, duties, operation and financing of the Dawson County Underground Water Conservation District.
(As amended)

S.B. 1750, Relating to the creation, administration, powers, duties, operation and financing of the Morris County Hospital District; authorizing a tax; granting the authority to issue bonds; and granting the power of eminent domain.

S.B. 1777, Relating to the creation, administration, powers, duties, operation and financing of the Yoakum County Underground Water Conservation District. (As amended)

The House has adopted the Conference Committee Report on **H.B. 187** and **S.B. 297** by non-record votes.

The House has refused to concur in Senate amendments to **H.B. 1946** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Pennington, Chair; Alexander, Eckels, Saunders, Valigura.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.C.R. 61**. The following have been appointed on the part of the House: Guerrero, Chair; Arnold, Glossbrenner, Heflin, S. Johnson.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1207**. The following have been appointed on the part of the House: T. Smith, Chair; Culberson, Junell, Swift, Willy.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 413**. The following have been appointed on the part of the House: A. Smith, Chair; Gibson, Lucio, Robnett, T. Smith.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1517**. The following have been appointed on the part of the House: Saunders, Chair; Alexander, Kuempel, McKinney, Valigura.

The House has concurred in Senate amendments to **H.B. 1888** by a record vote of 120 ayes, 0 nays, 1 present-not voting.

The House has concurred in Senate amendments to **H.B. 1029** by a record vote of 124 ayes, 0 nays, 1 present-not voting.

The House has concurred in Senate amendments to **H.B. 487** by a record vote of 122 ayes, 0 nays, 1 present-not voting.

The House has concurred in Senate amendments to the following House bills and resolution by non-record votes:

H.B. 2963
H.B. 2626
H.B. 2288
H.B. 981
H.B. 369
H.C.R. 68

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE RESOLUTION 646

Senator Barrientos offered the following resolution:

WHEREAS, The Senate of the State of Texas takes great pleasure in honoring the Stephen F. Austin High School Girls' Swim Team for their significant accomplishments in the swimming and diving championships; and

WHEREAS, The girls' swim team placed fourth in the Texas High School Swimming and Diving Championships held recently; and

WHEREAS, The perseverance and determination exhibited by this fine team has brought honor and recognition to themselves, their coaches, their parents, and their school; and

WHEREAS, Catherine Cooper, Andrea Ciro, Dawn Kenroy, and Candace Newell are to be commended by the Texas Senate for displaying a true competitive spirit and the desire to succeed in accomplishing their goals; and

WHEREAS, Each girl deserves the plaudits of their judges for reaching their perfection of form and performance; and

WHEREAS, This superb team placed second in the 200-yard medley relay with a time of 1:50.37 and second in the 400-yard freestyle with a time of 3:36.09 to qualify for All-American time standards; and

WHEREAS, Catherine placed fourth in the 100-yard butterfly; Andrea placed seventh in the 100-yard freestyle; and Candace placed 13th in the 100-yard backstroke; and

WHEREAS, Under the excellent leadership of their coach, Ann Beardsley Mjos, this team has earned the respect and admiration they so richly deserve; and

WHEREAS, Ann Mjos has instilled in her young athletes a sense of fair play and respect for the highest ideals of American sportsmanship; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 71st Legislature, hereby congratulate the Stephen F. Austin Girls' Swim Team for their recent accomplishments and acknowledge these four girls who are excellent students as well as swimmers; and, be it

RESOLVED, That a copy of this Resolution be prepared for them as a token of esteem and with best wishes for the future from the Texas Senate.

The resolution was read.

GUESTS PRESENTED

Senator Barrientos escorted the members of the swim team and their coach, Ann Mjos, to the President's Rostrum.

These young ladies were presented with enrolled copies of S.R. 646, adopted by the Senate on May 16, 1989.

CONFERENCE COMMITTEE REPORT SENATE BILL 294

Senator Krier submitted the following Conference Committee Report:

Austin, Texas
May 16, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 294 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

KRIER
ARMBRISTER

GIBSON
DANBURG

HARRIS
MONTFORD
TEJEDA

On the part of the Senate

R. LEWIS
WALLACE
WATKINS

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the creation of the Texas preservation trust fund and the preservation of historic property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 442, Government Code, is amended by adding Section 442.0071 to read as follows:

Sec. 442.0071. TEXAS PRESERVATION TRUST FUND. (a) The Texas preservation trust fund is a fund in the state treasury. The fund consists of transfers made to the fund, loan repayments, grants and donations made for the purposes of this program, proceeds of sales, income earned on money in the fund, and any other money received under this section. Money in the fund may be used only for the purposes of this section and may not be used to pay operating expenses of the commission. Money allocated to the commission's historic preservation grant program shall be deposited to the credit of the fund. Income earned on money in the fund shall be deposited to the credit of the fund.

(b) The commission may use money in the Texas preservation trust fund to provide financial assistance to public or private entities for the acquisition, restoration, or preservation of historic property in the state that is listed in the National Register of Historic Places or Recorded Texas Historic Landmarks or that the commission determines is eligible for such a listing. The financial assistance may be in the amount and form and according to the terms that the commission by rule determines. The commission shall give priority to property the commission determines to be endangered by demolition, neglect, underuse, or other threat to the property. Money deposited to the credit of the fund specifically for architectural projects or for archeological projects may be used only for the type of projects specified. If such a specification is not made, 90 percent of the money shall be used for historic architectural projects and 10 percent shall be used for prehistoric and historic archeological projects.

(c) As a condition of providing financial assistance under this section, the commission shall require creation of a preservation easement in the property, as provided by Chapter 183, Natural Resources Code, in favor of the state, and shall require creation of other appropriate covenants in favor of the state. The commission may take any necessary action to enforce repayment of a loan made under this section.

(d) The commission, after considering the recommendations of the governor, lieutenant governor, and speaker of the house of representatives, shall appoint an advisory board composed of:

- (1) one representative of a bank or savings and loan association;
- (2) one attorney with a recognized background in historic preservation;
- (3) two architects with substantial experience in historic preservation;
- (4) one archeologist with substantial experience in Texas archeology;
- (5) one real estate professional with experience in historic preservation;
- (6) two persons with demonstrated commitment to historic preservation; and
- (7) one director of a nonprofit historic preservation organization.

(e) Members of the advisory board serve two-year terms expiring February 1 of each odd-numbered year. A member of the advisory board is not entitled to

compensation for the member's service on the advisory board but is entitled to reimbursement for reasonable expenses incurred in attending advisory board meetings, subject to any limit provided by the General Appropriations Act.

(f) The commission may not provide financial assistance in an amount over \$20,000 for a project without the approval of the advisory board. The advisory board shall recommend to the commission rules for administering this section.

(g) The commission may accept grants or other donations of money or other property and services from any source. Money received under this subsection shall be deposited to the credit of the Texas preservation trust fund.

SECTION 2. This Act takes effect September 1, 1989.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT SENATE BILL 489

Senator Santiesteban submitted the following Conference Committee Report:

Austin, Texas
May 22, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 489 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

SANTIESTEBAN
LYON
CARRIKER
URIBE

On the part of the Senate

GUERRERO
HARRISON
BERLANGA

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to the continuation, powers, and duties of the Department of Agriculture; providing penalties; making an appropriation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.003, Agriculture Code, is amended to read as follows:

Sec. 11.003. SUNSET PROVISION. The Department of Agriculture is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the department is abolished September 1, 2001 [1989].

SECTION 2. Section 11.005, Agriculture Code, is amended to read as follows:

Sec. 11.005. QUALIFICATIONS. (a) To be eligible for election as commissioner or appointment to fill a vacancy in the office of commissioner, a person must:

(1) have been engaged, for at least five of the 10 years preceding the year in which the person is elected or appointed to the person's initial term, in the business of agriculture;

(2) have worked, for the five-year period preceding the calendar year in which the person is elected or appointed to the person's initial term, for a state or federal agency in a position directly related to agriculture; or

(3) have owned or operated, for at least five of the 10 years preceding the year in which the person is elected or appointed to the person's initial term, farm, ranch, or timber land that qualifies for agricultural use appraisal under Subchapter C, Chapter 23, Tax Code, and be participating, in the calendar year in which the person is elected or appointed to the person's initial term, in a farm program administered by the federal Agricultural Stabilization and Conservation Service.

(b) For purposes of this section, a person is engaged in the business of agriculture if the person is engaged, for the purpose of wholesale or retail sale, in:

(1) the production of crops for human or animal consumption, or planting seed;

(2) floriculture, viticulture, horticulture, or aquaculture;

(3) the raising or keeping of livestock; or

(4) the processing of any of the products listed in Subdivisions (1) through (3) of this subsection. [The commissioner must be an experienced and practical farmer and have knowledge of agriculture, manufacturing, and general industry.]

SECTION 3. Section 12.013, Agriculture Code, is amended to read as follows:

Sec. 12.013. EMPLOYEES. (a) The department may employ personnel as the duties of the department require. The commissioner shall provide to the department's employees, as often as necessary, information regarding their qualifications for employment and their responsibilities under applicable laws relating to standards of conduct for state employees.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be based on the system established under this subsection.

(c) The commissioner or the commissioner's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(d) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the department work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underutilization.

(e) A policy statement prepared under Subsection (d) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

(f) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (e) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 4. Chapter 12, Agriculture Code, is amended by adding Section 12.0135 to read as follows:

Sec. 12.0135. CONFLICT PROVISIONS. (a) A person may not act as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(b) An officer, employee, or paid consultant of a statewide Texas trade association or an affiliate of a national trade association in the field of agriculture may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a statewide Texas trade association or an affiliate of a national trade association in the field of agriculture may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For the purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 5. Subsection (a), Section 12.014, Agriculture Code, is amended to read as follows:

(a) The department shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act [On or before November 1 of each year, the department shall submit to the governor a full report on the work and expenditures of the department during the preceding fiscal year. The governor shall transmit the report to the legislature].

SECTION 6. Chapter 12, Agriculture Code, is amended by adding Section 12.0145 to read as follows:

Sec. 12.0145. SUBMISSION OF PROPOSED FEE SCHEDULE. The department shall include, as part of each request for legislative appropriations submitted to the Legislative Budget Board, a proposed fee schedule that would recover all direct costs of administering each regulatory program of the department except a regulatory program exempted by the department because increased cost recovery would be contrary to the program's purpose.

SECTION 7. Subsection (c), Section 12.017, Agriculture Code, is amended to read as follows:

(c) A person commits an offense if the person violates a rule adopted by the department under this section. An offense under this section is a Class C misdemeanor [punishable by a fine of not less than \$25 nor more than \$200].

SECTION 8. Chapter 12, Agriculture Code, is amended by adding Section 12.0175 to read as follows:

Sec. 12.0175. GROWN IN TEXAS; NATURAL, LEAN, OR ORGANIC CERTIFICATION. (a) If the department establishes a program to promote products grown in the state or products made from ingredients grown in the state, the department may charge a membership fee not to exceed \$50, as provided by department rule, for each producer that participates in the program. The fee shall be designed to recover the costs of promotion.

(b) If the department establishes an organic certification program, the department may charge a fee not to exceed \$150, as provided by department rule, for each participant certified by the department. The fee shall be designed to recover the costs of inspection for purposes of certification.

SECTION 9. Section 12.018, Agriculture Code, is amended to read as follows:

Sec. 12.018. [AFLATOXIN] TESTING. (a) On request of any person, the department may test an agricultural product for aflatoxins.

[(b)] The department may set and charge a fee of not less than \$20 nor more than \$40 for each test [testing under this section].

(b) On request of any person, the department may perform laboratory analyses on agricultural products, including testing for pesticide residue, protein content, and milk butterfat content.

(c) The department shall charge a fee of not less than \$5 nor more than \$150 for each laboratory analysis performed under Subsection (b) of this section. The department shall set by rule the fee for each type of laboratory analysis. Each fee shall be designed to recover at least half of the costs of performing the analysis.

SECTION 10. Section 12.020, Agriculture Code, is amended to read as follows:

Sec. 12.020. ADMINISTRATIVE PENALTIES [DEFERRED LICENSE SUSPENSION]. (a) If a person violates a provision of this code described by Subsection (c) of this section or a rule or order adopted by the department under a provision of this code described by Subsection (c) of this section, the department may assess an administrative penalty against the person as provided by this section [In this section, licensee means a person that holds a license under this code or operates under or seeks certification from the department].

(b) The penalty for each violation may be in an amount not to exceed the maximum provided by Subsection (c) of this section. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessments [If the department is authorized to suspend a license under this code, the commissioner or his agent may defer suspension if suspension is based on a violation of this code or a rule of the department and may impose a civil penalty in lieu of suspension. In determining the amount of the penalty, the department shall consider the economic impact that suspension would have on the licensee. Except for licenses issued under Chapters 75 and 76, the amount of a civil penalty imposed under this section may not be less than \$50 per day for each day that the license would be suspended. For licenses issued under Chapters 75 and 76, the amount of a civil penalty imposed under this section may not be less than \$25 per day nor more than \$50 per day for each day that the license would be suspended. If the licensee fails to pay the civil penalty before the 11th day after the day he is notified of the civil penalty, the licensee loses the opportunity to pay the civil penalty in lieu of suspension and the department shall proceed with the suspension].

(c) The provisions of this code subject to this section and the applicable penalty amounts are as follows:

<u>Provision</u>	<u>Maximum Penalty</u>
<u>Chapters 13, 14, 61, 101, 102, 103, and 132</u>	<u>\$ 500</u>
<u>Subchapter B, Chapter 71</u>	<u>\$2,000</u>

Subchapters A and C, Chapter 71,

Chapters 72, 73, and 74

\$5,000

[If the department finds good cause, the department need not suspend a license for a violation of this code or a rule of the department. A finding of good cause includes a finding that:

[(1) the violation could not reasonably have been foreseen by the licensee;

[(2) the violation could not have been prevented by the exercise of due diligence by the licensee; or

[(3) the licensee was entrapped].

(d) In determining the amount of the penalty, the department shall consider:

(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public;

(2) the economic damage to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department may issue a violation report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The department shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set forth in Subsection (d) of this section.

(f) Not later than the 14th day after the date on which the report is issued, the department shall give written notice of the report to the person charged. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Not later than the 20th day after the date on which notice is received, the person charged may accept the determination of the department made under Subsection (e) of this section, including the recommended penalty, or make a written request for a hearing on the determination.

(h) If the person charged with the violation accepts the determination of the department, the commissioner shall issue an order approving the determination and ordering the payment of the recommended penalty.

(i) If the person charged requests a hearing or fails to timely respond to the notice, the department shall set a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the department. The hearing examiner shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact, conclusions of law, and recommendations of the hearing examiner, the commissioner by order may find a violation has occurred and may assess a penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(j) The department shall give notice of the commissioner's order to the person charged. The notice shall include:

(1) the findings of fact and conclusions of law separately stated;
(2) the amount of the penalty ordered, if any;
(3) a statement of the right of the person charged to judicial review
of the commissioner's order, if any; and
(4) other information required by law.

(k) Within the 30-day period immediately following the day on which the order becomes final as provided by Subsection (c), Section 16, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or
(2) if the person files a petition for judicial review contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty:

(A) forward the amount to the department for
placement in an escrow account; or

(B) in lieu of payment into escrow, post with the
department a supersedeas bond in a form approved by the department for the
amount of the penalty, the bond to be effective until all judicial review of the order
or decision is final.

(l) If a person charged is financially unable to either forward the amount of the penalty for placement in an escrow account or post a supersedeas bond for the amount of the penalty, the person may satisfy the requirements of Subsection (k)(2) of this section by filing with the department an affidavit sworn by the person charged, stating that the person is financially unable to either forward the amount of the penalty or post a bond.

(m) Failure to forward the money to or to post the bond or file the affidavit with the department within the time provided by Subsection (k) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to pay the penalty in full as provided under Subsection (k)(1) of this section or forward the money, post the bond, or file the affidavit as provided by Subsection (k) or (l) of this section, the department may forward the matter to the attorney general for enforcement.

(n) Judicial review of the order or decision of the department assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(o) If the penalty is reduced or not assessed by the court, the department shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the department under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the department under Subsection (k) of this section and ending on the date the penalty is remitted.

(p) A penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund.

SECTION 11. Chapter 12, Agriculture Code, is amended by adding Section 12.022 to read as follows:

Sec. 12.022. AUTHORITY TO ACCEPT GIFTS. The department is authorized to accept gifts, grants, and donations and shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all gifts, grants, and donations received and disbursed, used, or maintained by the department during the preceding fiscal year.

This report shall be included in the annual report required by Section 12.014 of this chapter.

SECTION 12. Section 12.023, Agriculture Code, is amended to read as follows:

Sec. 12.023. EXPIRATION OF REGISTRATION OR LICENSES [FAILURE TO PAY FEES]. The department by rule may adopt a system under which the registration or licenses required by Section 14.004, 61.013, 71.043, 71.057, 75.004, 76.071, 76.105, or 132.021 of this code expire on various dates during the year. For the year in which the registration or license expiration date is changed, fees payable on renewal of the registration or license shall be prorated on a monthly basis so that each registrant or licensee shall pay only that portion of the fee that is allocable to the number of months during which the registration or license is valid. On renewal of the registration or license on the new expiration date, the total renewal fee is payable. [If the department is authorized by this code to require a person to pay an additional fee for the person's failure to pay in a timely manner any required license or certificate fee, the department may, after a hearing conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes):

[(1) suspend or cancel the person's license or certificate; or

[(2) refuse to renew the person's license or certificate until all fees that are due are paid;]

SECTION 13. Chapter 12, Agriculture Code, is amended by adding Section 12.024 to read as follows:

Sec. 12.024. LATE RENEWAL OF LICENSE OR REGISTRATION. (a) This section is applicable only to a renewal fee under Section 14.005, 71.043, 71.057, 75.004, 76.044, 76.073, 76.113, or 132.025 of this code.

(b) A late fee is assessed according to the following schedule:

<u>Days Late</u>	<u>Late Fee Amount</u>
<u>at least 1 but less than 31</u>	<u>20% of the renewal fee</u>
<u>at least 31 but less than 91</u>	<u>50% of the renewal fee</u>
<u>at least 91 but less than 365</u>	<u>100% of the renewal fee</u>

(c) A person who fails to pay the renewal fee and the applicable late fee within one year after the due date of the renewal fee is not eligible to renew a license. The ineligible person may reapply for an initial license or registration.

SECTION 14. Chapter 12, Agriculture Code, is amended by adding Section 12.025 to read as follows:

Sec. 12.025. PROGRAM ACCESSIBILITY PLAN. The department shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the department's programs.

SECTION 15. Chapter 12, Agriculture Code, is amended by adding Section 12.026 to read as follows:

Sec. 12.026. PUBLIC INTEREST INFORMATION; COMPLAINTS. (a) The department shall prepare information of public interest describing the functions of the department and the department's procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(b) The department by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated by the department;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the department; or

(3) in a bill for service provided by an individual or entity regulated by the department.

(c) The department shall keep an information file about each complaint filed with the department that the department has authority to resolve.

(d) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 16. Chapter 12, Agriculture Code, is amended by adding Section 12.027 to read as follows:

Sec. 12.027. COMPETITIVE COST REVIEW PROGRAM. The department is subject to the requirements of Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 17. Chapter 12, Agriculture Code, is amended by adding Section 12.028 to read as follows:

Sec. 12.028. COMPETITIVE BIDDING OR ADVERTISING. (a) The department may not adopt rules restricting competitive bidding or advertising by a person regulated by the department except to prohibit false, misleading, or deceptive practices by the person.

(b) The department may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the department a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person;

or

(4) restricts the person's advertisement under a trade name.

SECTION 18. Chapter 12, Agriculture Code, is amended by adding Section 12.029 to read as follows:

Sec. 12.029. MINORITY AND FEMALE-OWNED BUSINESS CONTRACTS. (a) The department shall establish by rule policies to encourage minority and female-owned small businesses to bid for contract and open market purchases of the department and to assist those businesses in that bidding. The department shall review the policies periodically to correct any deficiencies in the policies.

(b) The department annually shall determine the number, types, and value of contracts awarded to minority and female-owned small businesses in the year preceding the determination and the ratio of the number and the value of those contracts to the number and the value of all contracts awarded by the department in that year.

(c) The department shall file the policies established under this section with the State Purchasing and General Services Commission and the Texas Department of Commerce. The commission shall conduct an analysis of the department's policies and the policies' effectiveness and shall report the analysis to the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each even-numbered year.

(d) In this section, "minority and female-owned small business" means a business enterprise:

(1) that is independently owned and operated, that was formed for the purpose of making a profit, and that has fewer than 100 employees and less than \$1 million in annual gross receipts; and

(2) that is controlled by one or more socially and economically disadvantaged persons who own at least 51 percent of the business enterprise and are socially disadvantaged because of their identification as members of certain

groups, including women, black Americans, Mexican Americans and other Americans of Hispanic origin, Asian Americans, and American Indians.

SECTION 19. Chapter 13, Agriculture Code, is amended by adding Section 13.007 to read as follows:

Sec. 13.007. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 20. Section 13.041, Agriculture Code, is amended to read as follows:

Sec. 13.041. PENALTIES; DEFENSE. (a) An offense under Section 13.021, 13.027, 13.029, or each of Sections 13.030 through 13.039 of this code is a Class C misdemeanor [punishable by a fine of not less than \$10 nor more than \$200].

(b) [An offense under Section 13.029 of this code is a misdemeanor punishable by a fine of not less than \$25 nor more than \$100.

[(c) An offense under Section 13.021 or each of Sections 13.030-13.038 of this code is a misdemeanor punishable by a fine of not less than \$20 nor more than \$100; unless the accused has been previously convicted of the offense, in which case it is punishable by a fine of not less than \$50 nor more than \$200.

[(d)] It is a defense to prosecution under Sections 13.030-13.038 of this code that a discrepancy between the actual weight or volume at the time of sale to a consumer and the weight marked on the container or a discrepancy between the fill of a container and the capacity of the container is due to unavoidable leakage, shrinkage, evaporation, waste, or causes beyond the control of the seller acting in good faith.

SECTION 21. Section 13.101, Agriculture Code, is amended to read as follows:

Sec. 13.101. REQUIRED INSPECTION. (a) At least once every three years [each year], or more often as required by the department, a weight or measure shall be inspected and tested for correctness by a sealer if it:

(1) is kept for sale, sold, or used by a proprietor, agent, lessee, or employee in proving the weight or measure, including the size, quantity, extent, or area, of any item; or

(2) is purchased, offered, or submitted by a proprietor, agent, lessee, or employee for sale, hire, or award.

(b) The department shall, to the extent necessary to ensure compliance with the official standards, require additional inspection and testing of weights and measures.

(c) [(b)] A person who uses or keeps for use, or has or offers for sale, a weight or measure is responsible for having the weight or measure inspected and tested as required by this section ~~[by a sealer]~~.

(d) [(c)] Unless the department requires an additional inspection ~~[more often than annually]~~, a weight or measure that is inspected and found correct by a sealer may be kept for use, used, kept or offered for sale, or sold ~~[for one year]~~ without further testing.

SECTION 22. Subsection (b), Section 13.102, Agriculture Code, is amended to read as follows:

(b) A weight or measure that has been tested, sealed, and certified correct by the National Institute of Standards and Technology ~~[Bureau of Standards]~~ may be kept or offered for sale or sold without being sealed under this subchapter.

SECTION 23. Section 13.112, Agriculture Code, is amended to read as follows:

Sec. 13.112. TESTS FOR STATE INSTITUTIONS. As ~~[At least once each year, or more often as]~~ requested by the State Purchasing and General Services Commission or the governing body of a state institution, the department shall test each weight or measure used by a state institution for any purpose, including a weight or measure used in checking the receipt and distribution of supplies. The department shall report results of the test to the chairman of the governing body of the institution.

SECTION 24. Subsections (a) and (b), Section 13.113, Agriculture Code, are amended to read as follows:

(a) The standards of weights and measures received from the United States and certified by the National Institute of Standards and Technology ~~[Bureau of Standards]~~ are the state's standards by which all state and local standards of weights and measures are tried, authenticated, proved, and sealed.

(b) The department shall maintain the official standards in a safe and suitable place in the offices of the department. The standards may not be moved except for repairs or certification. The department shall maintain the standards in good order and shall submit them to the National Institute of Standards and Technology ~~[Bureau of Standards]~~ for certification at least once each 10 years.

SECTION 25. Subsection (a), Section 13.114, Agriculture Code, is amended to read as follows:

(a) The department shall establish tolerances and specifications for commercial weighing and measuring apparatus used in this state. The tolerances and specifications shall be similar to those recommended by the National Institute of Standards and Technology ~~[Bureau of Standards]~~.

SECTION 26. Section 13.122, Agriculture Code, is amended to read as follows:

Sec. 13.122. PENALTIES. ~~[(a)]~~ An offense under Section 13.103, 13.106, 13.114, or each of Sections 13.116 through 13.121 of this code is a Class C misdemeanor ~~[punishable by a fine of not less than \$25 nor more than \$100]~~.

~~[(b)] An offense under Section 13.116, 13.120, or 13.121 of this code is a misdemeanor punishable by a fine of not less than \$20 nor more than \$100, unless the accused has been previously convicted of the offense, in which case it is punishable by a fine of not less than \$50 nor more than \$200.~~

~~[(c)] An offense under Section 13.106, 13.114, 13.117, 13.118, or 13.119 is a misdemeanor punishable by a fine of not less than \$10 nor more than \$200.~~

SECTION 27. Section 13.207, Agriculture Code, is amended to read as follows:

Sec. 13.207. LICENSING OF TESTERS. (a) Without holding a license issued under this section, a person may not operate a testing apparatus to determine

the percentage of butterfat in milk or cream for the purpose of purchasing the milk or cream.

(b) A person is entitled to a license as a tester if the person is reliable, competent, and qualified to operate the apparatus in order to make an accurate test.

(c) Before issuing a license, the department may make necessary investigations of the qualifications of an applicant. The department may refuse to license an applicant that the department finds is not qualified under Subsection (b) of this section.

(d) The department shall collect a fee of \$10 for each license issued.

(e) A license issued under this section is valid for one year.

(f) ~~The department may revoke the license of a person who the department finds has failed to comply with a provision of this subchapter or a rule adopted under this subchapter. The department may suspend for six months the license of a tester who is finally convicted of a second offense under Section 13.212 of this code.~~

(g) A licensee or a licensee's employer for valid reason may appoint a substitute tester for a period of 15 days. The reason for the appointment must be reported to the department. With approval of the department, the appointment may be extended for an additional period not to exceed 10 days.

(g) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this subchapter or a rule adopted by the department under this subchapter.

(h) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(i) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 28. Section 13.211, Agriculture Code, is amended to read as follows:

Sec. 13.211. DUTIES OF DISTRICT OR COUNTY ATTORNEY. The county or district attorney of a county in which a violation of this subchapter occurs shall investigate and prosecute the violation. ~~[If necessary, the county or district attorney may sue to enjoin further violations of this subchapter.]~~

SECTION 29. Subsection (d), Section 13.212, Agriculture Code, is amended to read as follows:

(d) An offense under this section is a Class C misdemeanor ~~[punishable by a fine not to exceed \$1,000].~~

SECTION 30. Section 13.255, Agriculture Code, is amended to read as follows:

Sec. 13.255. CERTIFICATE. (a) A public weigher, whether elected or appointed, or deputy public weigher may not officially weigh a commodity unless the weigher has obtained from the department a certificate of authority.

(b) A state public weigher must submit a nonrefundable fee of \$200 with the application for a certificate of authority. A county public weigher or a deputy public weigher must submit a nonrefundable fee of \$50 with the application for a certificate of authority. [The department shall collect a fee of \$50 before issuing a certificate

of authority to a county public weigher or to a deputy public weigher and shall collect a fee of \$200 before issuing a certificate of authority to a state public weigher.

~~[(c) The department may suspend or revoke the certificate of authority of an appointed public weigher or of a deputy of an appointed county public weigher for cause after a hearing as a contested case under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). A public weigher or deputy public weigher whose certificate is suspended or revoked may not issue an official certificate of weight or measure.]~~

SECTION 31. Chapter 13, Agriculture Code, is amended by adding Section 13.2555 to read as follows:

Sec. 13.2555. REVOCATION, MODIFICATION, OR SUSPENSION OF CERTIFICATE. (a) The department shall revoke, modify, or suspend the certificate of authority of an appointed public weigher or a deputy of an appointed county public weigher, assess an administrative penalty, place on probation the person whose certificate has been suspended, or reprimand an appointed public weigher or a deputy of an appointed county public weigher for a violation of this subchapter or a rule adopted by the department under this subchapter.

(b) If a certificate suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a person's certificate, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 32. Subsection (b), Section 14.005, Agriculture Code, is amended to read as follows:

(b) An applicant must file a separate application for each license, renewal, or amendment and shall accompany each application for a license or renewal with a nonrefundable annual license fee of \$30 [license fee]. The department shall prescribe the information to be contained in the application. A person who fails to submit a renewal fee on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

SECTION 33. Section 14.015, Agriculture Code, is amended to read as follows:

Sec. 14.015. DENIAL, REVOCATION, MODIFICATION, OR SUSPENSION[~~, REVOCATION, OR DENIAL~~] OF LICENSE. (a) The department may deny an application for a license if the applicant fails to comply [suspend, revoke, or deny a license if, after an opportunity for a hearing, the department determines that the warehouseman has violated or failed to comply] with a requirement of this subchapter or a rule adopted by the department under this subchapter.

(b) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this subchapter or a rule adopted by the department under this subchapter.

(c) If the department considers it necessary, the department may suspend a license without hearing for a period not to exceed 30 days.

(d) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(e) Except as provided by Subsection (c) of this section, if the department proposes to deny, revoke, modify, or suspend a person's application or license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 34. Subsection (b), Section 16.010, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor ~~[punishable by a fine of not less than \$10 nor more than \$500].~~

SECTION 35. Subsection (a), Section 41.059, Agriculture Code, is amended to read as follows:

(a) The board shall file with the commissioner a proposed budget and may expend funds only after the commissioner has approved the budget. If after thorough review the commissioner disapproves the proposed budget, the commissioner shall return the proposed budget to the submitting board not later than the 45th day after the date on which the proposed budget is submitted with a statement of reasons for disapproval.

SECTION 36. Subsection (b), Section 41.103, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$50 nor more than \$200;~~

~~[(2) confinement in the county jail for not less than 10 days nor more than 6 months; or~~

~~[(3) both fine and confinement under this subsection].~~

SECTION 37. Subsection (b), Section 53.024, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$25 nor more than \$1,000;~~

~~[(2) confinement in jail for not less than one year; or~~

~~[(3) both fine and confinement under this subsection].~~

SECTION 38. Chapter 61, Agriculture Code, is amended by adding Section 61.0135 to read as follows:

Sec. 61.0135. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.

(b) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 39. Subsection (c), Section 61.018, Agriculture Code, is amended to read as follows:

(c) An offense under this section is a Class C misdemeanor [punishable by a fine not exceeding \$50, unless the accused has been previously convicted of a similar offense, in which case the fine may not exceed \$200].

SECTION 40. Section 62.005, Agriculture Code, is amended by adding Subsection (d) to read as follows:

(d) An application for licensing as a Foundation, Registered, or Certified producer of seed or plants must be accompanied by a nonrefundable license fee not to exceed \$100, as provided by department rule.

SECTION 41. Chapter 62, Agriculture Code, is amended by adding Section 62.0065 to read as follows:

Sec. 62.0065. NOTICE AND ANALYSIS OF EXAMINATION RESULTS.

(a) Not later than the 30th day after the date on which a licensing or registration examination is administered under this chapter, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify examinees of the results of the examination not later than the 14th day after the date on which the board receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails a licensing or registration examination administered under this chapter, the board shall furnish the person with an analysis of the person's performance on the examination.

SECTION 42. Section 62.010, Agriculture Code, is amended to read as follows:

Sec. 62.010. REVOCATION, MODIFICATION, OR SUSPENSION OF REGISTRATION OR [;] LICENSE [; OR CERTIFICATION]. (a) The department shall revoke, modify, or suspend the registration or license of [if an inspector reports to the department that] a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants, place on probation a person whose registration or license has been suspended, or reprimand a registrant or licensee if the person makes [has made] exaggerated claims for products, fails [or has failed] to observe any rule governing the maintenance and production of a certified class of seed or plants that he or she is registered or licensed to produce or maintain, or violates another requirement of this chapter or a rule adopted by the board or the department under this chapter [the department may give written notice to the breeder or producer of the time and place of a revocation hearing to be held by the department not later than the 10th day following the day on which notice is issued].

(b) If a suspension of a license or registration is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

~~(c) If [at the hearing,] the department revokes a [finds that the registered plant breeder or licensed producer has made exaggerated claims or has violated any rule for the production and maintenance of the certified class of seed or plants involved; the department may revoke the] registration or license, the department shall [and] order the cancellation and withdrawal of all appropriate certification labels previously issued for the seed or plants.~~

~~(d) If the department proposes to revoke, modify, or suspend a person's registration or license, the person is entitled to a hearing before a hearing officer designated by the department. The board shall prescribe procedures by which all decisions of the department to revoke, modify, or suspend a registration or license issued under this chapter are appealable to the board [(c) A registered plant breeder or licensed producer whose registration or license has been revoked and whose certification labels have been canceled and withdrawn may appeal the action to the board by filing a notice of appeal with the department within 30 days of the revocation. The department shall report the notice of appeal to the board, which shall give written notice of the time and place for an appeal hearing to the appellant. The hearing on appeal may not be less than 10 nor more than 30 days after the day on which notice of appeal is filed with the department. If the department's action is reversed at the appeal hearing, the board shall direct the department to reinstate the registration or license and reissue certification labels for seed or plants for which labels were previously canceled and withdrawn].~~

SECTION 43. Section 62.011, Agriculture Code, is amended to read as follows:

Sec. 62.011. PENALTIES. (a) A person commits an offense if the person:

(1) sells or offers for sale in this state seed or plants with labeling or packaging accompanying the seed or plants using the terms "from officially inspected fields," "state inspected," "approved seed," "approved plants," "approved sods," "approved trees," "inspected fields," "foundation seed," "certified plants," or terms having the same meaning, unless the seed or plants have been certified as Foundation, Registered, or Certified seed or plants;

(2) represents himself or herself to be a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants unless he or she has been registered or licensed under this chapter;

(3) sells or offers for sale in this state Foundation, Registered, or Certified seed or plants that are not in compliance with this chapter or with the rules adopted under this chapter;

(4) sells or offers for sale seed or plants represented to be certified in explicit oral or written statements or by misleading oral or written statements if the seed or plants have not been certified or have not been certified as being of the class of which they are represented;

(5) violates Section 62.007(c) of this code; or

(6) violates Section 62.009(c), (d), or (e) of this code.

(b) An offense under Subsection (a)(1), (a)(2), ~~(a)(5), or (a)(6)~~ of this section is a Class C misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$10 nor more than \$100;~~

~~[(2) confinement in county jail for not more than 30 days; or~~

~~[(3) both fine and confinement under this subsection].~~

(c) An offense under Subsection (a)(3) or (a)(4) of this section is a Class B misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$200 nor more than \$500;~~

~~[(2) confinement in county jail for not more than 60 days; or~~

~~[(3) both fine and confinement under this subsection.~~

~~[(d) An offense under Subsection (a)(5) of this section is a misdemeanor punishable by a fine of not more than \$1,000].~~

SECTION 44. Section 71.012, Agriculture Code, is amended to read as follows:

Sec. 71.012. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment [~~private or common carrier, including a railway, steamship, motorboat, bus, or truck, that transports or delivers any fruit, plant, shrub, or other carrier of an insect pest or plant disease in violation of an order or rule of the department under this subchapter is liable to the state for a penalty in the amount of \$500~~].

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty [~~The attorney general shall institute suit for the recovery of a penalty under this section~~].

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit [~~Venue for a suit under this section is in Travis County~~].

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 45. Subsection (b), Section 71.013, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine not to exceed \$100~~].

SECTION 46. Section 71.041, Agriculture Code, is amended to read as follows:

Sec. 71.041. DEFINITIONS. In this subchapter:

(1) "Florist" means a person who maintains, grows, raises, or buys and offers for sale or lease for profit florist items.

(2) "Florist item" means a cut flower, potted plant, blooming plant, inside foliage plant, bedding plant, corsage flower, cut foliage, floral decoration, or live decorative material.

(3) "Nursery product" includes a tree, shrub, vine, cutting, graft, scion, grass, bulb, or bud that is grown for, kept for, or is capable of, propagation and distribution for sale or lease.

(4) "Nursery grower" means a person who grows more than 50 percent of the nursery products that the person either sells or leases, regardless of the variety sold, leased, or grown.

SECTION 47. Section 71.042, Agriculture Code, is amended to read as follows:

Sec. 71.042. DUTY OF DEPARTMENT; RULES. The department shall enforce this subchapter and may adopt rules as necessary for the immunity and protection of plants from diseases and insect pests, including rules that:

(1) regulate the traffic, growing, shipping, [and] selling, and leasing of nursery products;

(2) provide for the inspection and control of florist items; and
(3) relate to city, private, or public parks, or shade trees, shrubbery, and ornamentals along city streets or property or on city residences.

SECTION 48. Section 71.043, Agriculture Code, is amended to read as follows:

Sec. 71.043. ANNUAL REGISTRATION ~~[CHIEF INSPECTOR]~~. (a) A florist or nursery owner must register with the department under this section each nursery, greenhouse, orchard, garden, or other place growing for sale or lease, offering for sale or lease, or otherwise distributing a florist item or nursery product.

(b) A florist or nursery owner may apply for registration or renewal of registration by submitting an application prescribed by the department and a nonrefundable annual fee. The fee shall be based on the size and type of a location, as defined by department rule, where a florist or nursery owner grows for sale or lease or offers for sale or lease a florist item or nursery product.

(c) Registrations under this section expire one year after issuance. A person who fails to submit a renewal fee on or before the expiration date of the registration must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

(d) Upon receipt of the correct annual registration fee, the department shall issue a registration certificate for each location a florist or nursery owner has registered.

(e) A person may not offer for sale or lease a nursery product or florist item without a registration certificate issued under this section. [The commissioner shall appoint one person as chief inspector to inspect or supervise the inspection of nursery products, florist items, and premises in accordance with this subchapter.]

SECTION 49. Section 71.044, Agriculture Code, is amended to read as follows:

Sec. 71.044. ~~[ANNUAL]~~ INSPECTION. (a) At least once every three years [each year] the department shall inspect each nursery, greenhouse, orchard, garden, florist, or other place growing for sale or lease or offering for sale or lease a nursery product, florist item, or other item of plant life in order to determine if the product, item, or premises are infected with a disease or insect pest injurious to human, animal, or plant life.

(b) The department shall perform additional inspections to the extent necessary to ensure compliance with this subchapter and quarantine agreements with the federal government and other state governments.

(c) A department inspector may examine invoices or other documents relating to the shipping and receiving of nursery/floral products for the purpose of determining the origin, transit, and chain of custody of nursery/floral items found to be:

(1) infested with pests or infected with plant disease; or

(2) shipped in violation of state or federal quarantine laws, regulations, or agreements.

SECTION 50. Section 71.055, Agriculture Code, is amended to read as follows:

Sec. 71.055. REVOCATION OF CERTIFICATE. The department may revoke a certificate ~~[of inspection]~~ issued under this subchapter if it finds that the person to whom the certificate was issued:

(1) made a false representation; or

(2) violated or refused to comply with this subchapter or a rule or instruction of the department under this subchapter.

SECTION 51. Subsection (a), Section 71.050, Agriculture Code, is amended to read as follows:

(a) Each nursery product or florist item offered for sale or lease, consigned for shipment, or shipped by freight, express, or other means of transportation shall be accompanied by a copy of the certificate of inspection issued by the department.

SECTION 52. Subsection (c), Section 71.052, Agriculture Code, is amended to read as follows:

(c) The department may adopt suitable rules governing the sale or lease and shipment of camellias and other products as necessary for the control of camellia flower blight.

SECTION 53. Section 71.053, Agriculture Code, is amended to read as follows:

Sec. 71.053. INSPECTION OF SHIPMENTS. (a) The department shall inspect shipments of nursery products or florist items in this state to determine if the shipments are accompanied by the tags and certificates required by this subchapter and are free of pests or plant diseases.

(b) If the department finds that a shipment of a nursery product or florist item is diseased or pest-infested, the department shall take action necessary to abate the nuisance and protect the public health and welfare as provided in Section 71.046 of this subchapter.

(c) ~~[(b)]~~ If the department finds that a shipment of a nursery product or florist item is not accompanied by a required tag or certificate, the department shall treat the shipment as infected and may destroy or dispose of the shipment as provided in Section 71.046 of this subchapter. ~~[Money received from any sale of the shipment shall be deposited as other money collected by the department.]~~

SECTION 54. Section 71.056, Agriculture Code, is amended to read as follows:

Sec. 71.056. INSPECTION FEE ~~[FEES]~~. (a) The department shall fix by rule and collect a ~~[inspection fees in accordance with this section:~~

~~[(b) The fee for each inspection of an installation, an area, or premises, growing, selling, displaying, or handling nursery products shall be not less than \$15 nor more than \$75:~~

~~[(c) The fee for each inspection of an installation, an area, or premises, where florist items are bought and sold or offered for sale shall be not less than \$15 nor more than \$75:~~

~~[(d) The department shall fix the] fee for inspection of nursery products or florist items for the issuance of an importation certificate.~~

~~[(b) [(e)]]~~ The department shall account for fees collected under this section in the manner and method prescribed by the state auditor.

SECTION 55. Section 71.057, Agriculture Code, is amended to read as follows:

Sec. 71.057. NURSERY DEALERS AND AGENTS; ANNUAL REGISTRATION. (a) A person who buys and sells or leases or offers for sale or lease a nursery product and who has facilities that maintain or preserve the nursery product and prevent that product from becoming dry, infested, or diseased is a nursery dealer ~~[and shall register a permanent address with the department. Each copy of a certificate of inspection issued to a nursery dealer shall show the address registered with the department].~~

(b) A person is a nursery agent if the person sells or leases, offers for sale or lease, or takes mail orders for the sale or lease of a nursery product and:

(1) is entirely under the control of a nursery grower or nursery dealer with whom the nursery product offered for sale or lease originates; or

(2) operates on a cooperative basis for handling a nursery product with a nursery grower or nursery dealer.

(c) A nursery agent shall possess proper credentials from the nursery grower or nursery dealer the agent represents or cooperates with. A nursery agent who fails to possess proper credentials is subject to this subchapter as a nursery dealer.

(d) A nursery dealer or nursery agent must register with the department under this section before offering for sale or lease or otherwise distributing a nursery product.

(e) A nursery dealer or nursery agent may apply for registration or renewal of registration by submitting an application prescribed by the department and a nonrefundable annual fee. The fee shall be based on the size and type of a location, as defined by department rule, where a nursery dealer or nursery agent offers a nursery product for sale or lease.

(f) Registrations under this section expire one year after issuance. A person who fails to submit a renewal fee on or before the expiration date of the registration must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

(g) Upon receipt of the correct annual registration fee, the department shall issue a registration certificate for each location a florist or nursery owner has registered.

SECTION 56. Section 71.058, Agriculture Code, is amended to read as follows:

Sec. 71.058. PENALTIES. (a) A person commits an offense if the person wilfully or negligently:

(1) violates a provision of this subchapter [~~other than Section 71.052 of this code~~]; or

(2) fails or refuses to comply with a notice, order, or rule of the department under this subchapter.

~~(b) [A person commits an offense if the person imports a camellia plant or flower in violation of Section 71.052 of this code.]~~

~~[(c)] An offense under Subsection (a) of this section is a Class C misdemeanor [punishable by a fine of not less than \$25 nor more than \$200].~~

(c) Each day that a person maintains premises in a condition not in compliance with this subchapter after receiving notice by registered or certified mail under Section 71.046 of this code is a separate offense.

~~(d) [An offense under Subsection (b) of this section is a misdemeanor punishable by a fine of not more than \$100.]~~

~~[(e)] A person commits a separate offense for each camellia plant or flower imported.~~

SECTION 57. Chapter 71, Agriculture Code, is amended by adding Section 71.059 to read as follows:

Sec. 71.059. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$50 nor more than \$1,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney

of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 58. Chapter 71, Agriculture Code, is amended by adding Section 71.060 to read as follows:

Sec. 71.060. STOP-SALE ORDER. (a) If the department has reason to believe that a florist item or nursery product is in violation of this subchapter or a rule adopted under this subchapter, the department may issue and enforce a written order to stop the sale of the florist item or nursery product. The department shall present the order to the owner or the person in control of the florist item or nursery product. The person who receives the order may not sell the florist item or nursery product until discharged by a court under Subsection (b) of this section or until the department determines that the florist item or nursery product is in compliance with this subchapter and the rules adopted under this subchapter.

(b) The owner or the person in control of any florist item or nursery product prohibited from sale by an order of the department is entitled to sue in a court of competent jurisdiction where the florist item or nursery product is found for a judgment as to the justification of the order and for the discharge of the florist item or nursery product from the order in accordance with the findings of the court.

(c) This section does not limit the right of the department to proceed as authorized by another section of this subchapter.

SECTION 59. Subsection (b), Section 71.116, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [punishable by a fine of not less than \$25 nor more than \$100].

SECTION 60. Chapter 71, Agriculture Code, is amended by adding Section 71.117 to read as follows:

Sec. 71.117. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 61. Subsection (g), Section 72.042, Agriculture Code, is amended to read as follows:

(g) If the court finds the premises to be a public nuisance, the department may enter the premises and place them in compliance with the order. The owner shall pay to the department an amount not to exceed twice the minimum wage established under state law [25 cents] a person, as allowed by the court, for each hour

actually expended placing the premises in compliance with the order. In addition, the owner shall pay to the department the sum of \$250 [~~\$25~~], not as a penalty but as reasonable compensation for the time involved in the execution of the order.

SECTION 62. Chapter 72, Agriculture Code, is amended by adding Section 72.046 to read as follows:

Sec. 72.046. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 63. Section 72.061, Agriculture Code, is amended to read as follows:

Sec. 72.061. GENERAL PENALTY. (a) A person who violates any provision of this chapter for which a separate penalty is not provided commits an offense.

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine not to exceed \$200~~].

SECTION 64. Subsection (b), Section 72.062, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine not to exceed \$200~~].

SECTION 65. Subsection (b), Section 72.063, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine not to exceed \$200~~].

SECTION 66. Subsection (b), Section 72.064, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine not to exceed \$200~~].

SECTION 67. Section 73.002, Agriculture Code, is amended to read as follows:

Sec. 73.002. POLICY. The state recognizes that the citrus industry is a valuable asset and that [the] citrus fruit and trees are [~~crop is~~] highly susceptible to the ravages of insects, pests, and plant diseases. The state shall use all constitutional measures to protect this industry from destruction by pests and diseases.

SECTION 68. Section 73.005, Agriculture Code, is amended to read as follows:

Sec. 73.005. MOVEMENT OF INFECTED NURSERY PRODUCTS AND OTHER HOSTS INTO CITRUS ZONE. A person may not ship into the citrus

zone a nursery product, seed, citrus fruit, or other host infected with a pest or disease listed in Section 73.004(b) of this code.

SECTION 69. Subsections (b) and (c), Section 73.009, Agriculture Code, are amended to read as follows:

(b) An offense under Section 73.005 of this code is a Class A misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$100 nor more than \$1,000;~~

~~[(2) confinement in county jail for not less than 10 days nor more than one year; or~~

~~[(3) both fine and confinement under this subsection].~~

(c) An offense under Section 73.006 of this code is a Class C misdemeanor ~~[punishable by a fine of not less than \$50 nor more than \$200].~~

SECTION 70. Chapter 73, Agriculture Code, is amended by adding Section 73.010 to read as follows:

Sec. 73.010. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 71. Subsection (i), Section 74.004, Agriculture Code, is amended to read as follows:

(i) Reimbursement under Subsection (e) of this section does not prevent the department from seeking criminal or civil sanctions under this subchapter.

SECTION 72. Subsection (b), Section 74.007, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$50 nor more than \$500;~~

~~[(2) confinement in jail for not less than 10 nor more than 30 days;~~
or

~~[(3) both fine and confinement under this subsection].~~

SECTION 73. Chapter 74, Agriculture Code, is amended by adding Section 74.008 to read as follows:

Sec. 74.008. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 74. Subsection (b), Section 74.061, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor ~~[punishable by:~~
~~[(1) a fine of not less than \$50 nor more than \$500;~~
~~[(2) confinement in jail for not less than 10 nor more than 30 days;~~

or

~~[(3) both fine and confinement under this subsection].~~

SECTION 75. Chapter 74, Agriculture Code, is amended by adding Section 74.062 to read as follows:

Sec. 74.062. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 76. Section 75.004, Agriculture Code, is amended by adding Subsection (f) to read as follows:

(f) A person who fails to submit a renewal fee on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

SECTION 77. Chapter 75, Agriculture Code, is amended by adding Section 75.0055 to read as follows:

Sec. 75.0055. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department shall revoke, modify, or suspend a license, assess an

administrative penalty, suspend an administrative penalty for good cause, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of Section 75.005 of this code or a rule adopted by the department under that section.

(b) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 78. Section 75.024, Agriculture Code, is amended by amending Subsections (b) and (c) and by adding Subsection (d) to read as follows:

(b) An offense under this section is a Class A misdemeanor [punishable by:

(1) a fine of not less than \$100 nor more than \$2,000;

(2) confinement in jail for not more than 30 days; or

(3) both fine and confinement under this subsection].

(c) Section 76.1555 of this code, which provides for the assessment of administrative penalties, applies to a person who violates this chapter or a rule or order adopted by the department under this chapter.

(d) A [The] penalty provided by this section does not affect the civil liability of a person convicted under this section.

SECTION 79. Section 76.007, Agriculture Code, is amended to read as follows:

Sec. 76.007. INTERAGENCY COOPERATION [~~COOPERATIVE AGREEMENTS, GRANTS-IN-AID~~]. (a) The department shall be the lead agency for pesticide regulation in Texas. In cooperation with the U.S. Environmental Protection Agency or any federal agency responsible for implementation of federal pesticide law, the department shall:

(1) register pesticides for use in Texas;

(2) adopt lists of state-limited-use pesticides;

(3) provide for training, certification, and licensure of all classes of pesticide applicators;

(4) enforce pesticide laws and regulations governing the safe handling, use, storage, distribution, and disposal of pesticide products; and

(5) adopt rules to carry out the provisions of this chapter.

(b) The Texas Water Commission shall have principal authority to regulate and control water pollution.

(c) The department shall seek advice from the Texas Water Commission, the Parks and Wildlife Department, the Texas Department of Health, and the Texas Agricultural Extension Service in reviewing applications for special local need or emergency pesticide registrations. The department shall act expeditiously to review any application for special local need or emergency pesticide registrations.

(d) The department shall give written notice to the Texas Water Commission whenever it has probable cause to believe that serious contamination of water has occurred as a result of use, misuse, manufacture, storage, or disposal of pesticides so that the Texas Water Commission may proceed with an investigation of possible violation of the Water Code.

(1) If the Texas Water Commission determines that a violation of the Water Code has occurred, the commission shall seek the remedies provided by the Water Code.

(2) If the department determines that a violation of the Agriculture Code has occurred regarding the use, manufacture, storage, or disposal of pesticides, the department shall seek the remedies provided by this code.

(3) The foregoing remedies shall not be mutually exclusive.

(e) The Texas Water Commission shall give written notice to the department whenever it has probable cause to believe that serious contamination of water has occurred as a result of the use, misuse, storage, disposal, or manufacture of pesticides so that the department may proceed with an investigation to determine if a violation of the Agriculture Code has occurred.

(1) If the department determines that a violation of the Agriculture Code has occurred, the department shall seek the remedies provided by this code.

(2) If the Texas Water Commission determines that a violation of the Water Code has occurred, the Texas Water Commission shall seek the remedies provided by the Water Code.

(3) The foregoing remedies shall not be mutually exclusive.

(f) The department shall consult with the Texas Department of Health before denying or canceling a pesticide registration because of a suspected public health threat. The department shall also coordinate enforcement efforts with the department of health when a serious public health threat is suspected.

(g) A regulatory agency may receive grants-in-aid from any federal agency and may enter into cooperative agreements with a federal agency, an agency of this state, a subdivision of this state, or an agency of another state for the purpose of obtaining assistance in the implementation of this chapter.

SECTION 80. Section 76.003, Agriculture Code, is amended to read as follows:

Sec. 76.003. STATE-LIMITED-USE PESTICIDES. (a) After notice and public hearing, the department may adopt lists of state-limited-use pesticides for the entire state or for a designated area within the state.

(b) A pesticide may be included on a list of state-limited-use pesticides if the department determines that, when used as directed or in accordance with widespread and commonly recognized practice, the pesticide requires additional restrictions to prevent unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of the pesticide. However, the department shall not place a pesticide on the state-limited-use list solely on the basis of actual damage or risk of damage to water quality without first obtaining approval from the Texas Water Commission based on the impact of the pesticide's use on water quality.

(c) The department shall formally request an opinion regarding impact on water quality from the Texas Water Commission during department consideration of any amendments to the current list of state-limited-use pesticides.

(d) At the direction of the Texas Water Commission in conjunction with its responsibilities pursuant to Chapter 26, Water Code, the department shall add any pesticide to the state-limited-use list, and the department shall issue regulations regarding the time, place, and conditions of such pesticide's use.

(e) The department may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or used only:

(1) with permission of the department;

(2) under direct supervision of the department in certain areas under certain conditions; or

(3) in specified quantities and concentrations.

(f) ~~(d)~~ The department may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records.

SECTION 81. Section 76.004, Agriculture Code, is amended to read as follows:

Sec. 76.004. DEPARTMENT RULES. (a) After notice, the department shall conduct at least five regional hearings throughout the state before the adoption of any rule for carrying out the provisions of this chapter. Thereafter, ~~and hearing,~~ the department may adopt rules for carrying out the provisions of this chapter, including rules providing for:

(1) the collection, examination, and reporting of records, devices, and samples of pesticides;

(2) the safe handling, transportation, storage, display, distribution, or disposal of pesticides and pesticide containers; ~~and~~

(3) labeling requirements for pesticides and devices required to be registered under this chapter; ~~and~~

(4) ~~compliance with federal pesticide rules and regulations.~~

(b) Any rules adopted by the department for the purpose of protection or enhancement of water quality shall not be inconsistent with rules developed for the protection or enhancement of water quality by the Texas Water Commission pursuant to recommendations of the Groundwater Protection Committee.

SECTION 82. Subchapter A, Chapter 76, Agriculture Code, is amended by adding Section 76.009 to read as follows:

Sec. 76.009. AGRICULTURE RESOURCES PROTECTION AUTHORITY. (a) The Agriculture Resources Protection Authority is an agency of state government. The authority is composed of the following nine members:

(1) the director of the Texas Agricultural Experiment Station;

(2) the dean of the College of Agricultural Sciences of Texas Tech University;

(3) the dean of The University of Texas School of Public Health at Houston;

(4) the director of the environmental epidemiology program of the Texas Department of Health;

(5) the chief of the groundwater conservation section of the Texas Water Commission;

(6) the director of the Institute for International Agribusiness Studies of Prairie View A&M University;

(7) one person appointed by the governor to represent the interests of consumers;

(8) a producer of agricultural products appointed by the governor; and

(9) the commissioner of agriculture.

(b) A person appointed by the governor, with the advice and consent of the senate, under Subdivision (7) or (8) of Subsection (a) of this section serves a two-year term ending on February 1 of each odd-numbered year. A vacancy in one of those positions shall be filled by appointment by the governor for the unexpired term.

(c) The commissioner of agriculture is the presiding officer of the authority.

(d) The authority shall meet quarterly and at the call of the presiding officer or a majority of the members. To take an action, the authority must approve the action by a concurring vote of a majority of the total membership of the authority.

(e) A member may not receive compensation for service as a member of the authority. A member is entitled to reimbursement for actual and necessary expenses incurred in the performance of the functions of the authority, subject to any limitations on reimbursement provided by the General Appropriations Act.

(f) The delegation of functions under this section is designed to avoid overlapping responsibilities, to provide a means for all involved agencies to participate in the regulation of pesticides, and to clarify various areas of responsibility.

(g) The authority is the coordinating body for the policies and programs of management, regulation, and control of pesticides conducted by the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, the Texas Department of Health, the Texas Water Commission, and the Texas Structural Pest Control Board. Notwithstanding any other provision of this code or of any other law, the authority may:

(1) adopt any rule relating to pesticides, including a rule that amends or repeals an existing rule, except that the authority may not:

(A) adopt, amend, or repeal a rule under Chapter 125 of this code;

(B) repeal a rule that was adopted by an agency for which the authority is the coordinating body and that was in effect on May 1, 1989; or

(C) amend a rule in effect on May 1, 1989, that would make the rule less protective of the public health, safety, or welfare;

(2) review and approve or disapprove any rule relating to pesticides that is proposed by an agency for which the authority is the coordinating body, except a rule under Chapter 125 of this code;

(3) cooperate with and advise the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, the Texas Department of Health, the Texas Water Commission, the Texas Structural Pest Control Board, and any other state agency that may be concerned with the regulation of pesticides and notify those agencies of any rule the authority intends to adopt;

(4) collect, analyze, and disseminate information necessary for the effective operation of all existing or contemplated programs regulating pesticides;

(5) provide professional advice to private agencies and citizens of this state on matters relating to pesticides in cooperation with other state agencies, with professional groups, and with either state or private educational institutions;

(6) accept gifts, devises, and bequests and, with the approval of the governor, comply with the terms and conditions of any grant to accomplish any of the purposes of the authority;

(7) inform and advise the governor on matters involving pesticides and prepare and recommend to the governor and to the legislature any legislation the authority considers proper for the management and control of pesticides;

(8) make annual reports to the governor and the appropriate legislative oversight committees;

(9) exempt any federal or state agency from any regulatory provision if the authority determines that emergency conditions exist that require the exemption; and

(10) notwithstanding any conflicting or inconsistent provision in this code, hear and determine all appeals from orders entered, by an agency for which the authority is the coordinating body, under this chapter or Chapter 75 or 125 of this code.

(h) An agency for which the authority is the coordinating body may not adopt a rule disapproved by the authority under Subsection (g)(2) of this section.

(i) To ensure due process, the commissioner, because of the commissioner's statutory power over departmental orders, may not participate in the discussions or the determinations to be reached on appeals to the authority under Subsection (g)(10) of this section.

(j) The commissioner shall:

(1) as necessary, employ personnel as the duties of the authority may require and to the extent of legislative appropriations to the authority;

(2) keep an accurate and complete record of all authority meetings and hearings of the authority and maintain legal custody of all books, papers, documents, and other records of the authority;

(3) administer this chapter and Chapters 75 and 125 of this code and the rules adopted by the authority; and

(4) assign, reassign, or delegate the administrative and enforcement functions assigned to the commissioner by this subsection or by rules or policies established under this subsection to one or more of the divisions or other units within the department or to one or more employees of the department.

SECTION 83. Section 76.044, Agriculture Code, is amended to read as follows:

Sec. 76.044. FEES. (a) A nonrefundable [As a condition to registration or renewal of registration, an applicant shall pay to the department a] fee of \$60 for each pesticide to be registered must be submitted with an application for registration or renewal of registration.

(b) A [If a] person who fails to apply for renewal of registration on or before the expiration date of the registration must [March 1 of any year, the person, as a condition to renewal, shall] pay, in addition to the renewal fee, the [a] late [registration] fee provided by Section 12.024 of this code [of \$5] for each brand to be renewed[; in addition to the renewal fee].

SECTION 84. Subsection (b), Section 76.073, Agriculture Code, is amended to read as follows:

(b) A [If a] person who fails to apply for renewal of a pesticide dealer license on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code [March 1 of any year, the person, as a condition to renewal, shall pay a late license fee of \$5 in addition to the renewal fee].

SECTION 85. Section 76.076, Agriculture Code, is amended to read as follows:

Sec. 76.076. DENIAL, ~~[OR]~~ REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department may refuse to issue a pesticide dealer license if the applicant fails to comply with this subchapter. [If the department has reason to believe that an applicant has failed to comply with the requirements of this subchapter, or that a licensee has failed to comply with this subchapter or with a rule adopted under this subchapter, the department may conduct a hearing on denial or revocation of the person's license.]

(b) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee if the licensee fails to comply with this subchapter or a rule adopted by the department under this subchapter. [The department shall issue written notice of a hearing under this section to the applicant or licensee. The notice must contain a statement of the time and place of the hearing. The hearing shall be held after the 10th day following the day on which the notice is issued.]

(c) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of

the probation [After opportunity at the hearing for presentation of evidence by the applicant or licensee, the department may refuse to issue a pesticide dealer license or may revoke a license, as applicable, if the department finds that the applicant or licensee has failed to comply with the applicable requirements of this subchapter or a rule adopted under this subchapter].

(d) If the department proposes to deny a person's application for a pesticide dealer license or to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 86. Subsections (a) and (b), Section 76.101, Agriculture Code, are amended to read as follows:

(a) The department is the lead agency in the regulation of pesticide use and application and is responsible for coordinating activities of state agencies, except as provided by Section 76.007(b) of this code and by Chapter 26 of the Water Code. The department shall submit a state plan for the licensing [certification] of pesticide applicators to the administrator of the Environmental Protection Agency.

(b) The department shall coordinate, plan, and approve training programs and shall use the public and private resources of this state, including state universities, colleges, junior colleges, community colleges, the Texas Agricultural Extension Service, and the Texas experiment station. The department and the Texas Agricultural Extension Service shall adopt a memorandum of understanding to jointly coordinate, plan, and approve the training programs for private applicators.

SECTION 87. Section 76.102, Agriculture Code, is amended to read as follows:

Sec. 76.102. AGENCIES RESPONSIBLE FOR LICENSING ~~[CERTIFYING]~~ PESTICIDE APPLICATORS. (a) The department shall license ~~[certify]~~ pesticide applicators involved in the following license use categories:

- (1) agricultural pest control, including animal pest control;
- (2) forest pest control;
- (3) ornamental and turf pest control, except as provided by the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes);
- (4) seed treatments;
- (5) right-of-way pest control;
- (6) regulatory pest control;
- (7) aquatic pest control; and
- (8) demonstration pest control.

(b) The Texas Department of Health shall license [certify] pesticide applicators involved in the license use category of health-related pest control.

SECTION 88. Subsections (a), (b), and (c), Section 76.103, Agriculture Code, are amended to read as follows:

(a) The licensing of [certified] commercial applicators, [and] noncommercial applicators, and private applicators is contingent on the availability of federal funds to pay part of the costs of administering and enforcing the program.

(b) If federal funds and other funds made available for this program are not sufficient to pay all costs of administering and enforcing the program, the department shall certify that fact and discontinue the licensing of [certified] commercial applicators, [and] noncommercial applicators, and private applicators. The department shall publish notice of the discontinuance of the program in the Texas Register.

(c) If sufficient funds become available after discontinuance, the department shall certify the availability of sufficient funds to pay all costs of administration and

enforcement of the program and shall resume the licensing of ~~[certified]~~ commercial applicators, ~~[and]~~ noncommercial applicators, and private applicators. The department shall publish notice of resumption of the program in the Texas Register.

SECTION 89. Section 76.105, Agriculture Code, is amended to read as follows:

Sec. 76.105. LICENSE REQUIRED. (a) ~~A~~ ~~[Except as otherwise provided by this section, a]~~ person may not use ~~[or supervise the use of]~~ a restricted-use or state-limited-use pesticide unless the person is:

(1) licensed as a ~~[certified]~~ commercial applicator, ~~[or]~~ noncommercial applicator, or private applicator~~[-]~~; and

~~[(2)]~~ authorized by the license to use the restricted-use or state-limited-use pesticide in the license use categories covering the proposed pesticide use~~[-]~~;

~~(2) [(b) Subsection (a) of this section does not apply to]~~ an individual acting under the direct supervision of a licensed ~~[certified]~~ applicator; or~~[-]~~

~~(3) a certified private applicator as defined in Section 76.112(j) of this code.~~

~~(b) An~~ ~~[(c) For purposes of this section, an]~~ individual is under the direct supervision of a licensed noncommercial or a licensed private ~~[certified]~~ applicator if the individual is acting under the instructions and control of a licensed noncommercial or a licensed private ~~[certified]~~ applicator who is responsible for the actions of the individual and who is available if and when needed. The licensed noncommercial or licensed private ~~[certified]~~ applicator is not required to be physically present at the time and place of the pesticide application.

~~(c) An individual is under the direct supervision of a licensed commercial applicator if the individual is acting under the instructions and control of a licensed commercial applicator who is responsible for the actions of the individual and who is continuously physically present at the time and place of the pesticide application.~~

~~(d) A licensed applicator is responsible for assuring that the person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticides being used by the individual. A licensed applicator satisfies the requirements of this subsection if the person working under the licensee's direct supervision attends a program conducted by the department that is designed to make the person knowledgeable of the label requirements and rules and regulations governing the use of pesticides.~~

~~(e) A person who is authorized under this chapter to use restricted-use or state-limited-use pesticides shall comply with all applicable federal and state rules, regulations, and court orders regarding the use of restricted-use or state-limited-use pesticides.~~

~~(f) The other provisions of this section notwithstanding, the department may adopt rules or establish programs that the U.S. Environmental Protection Agency or another federal agency requires as a condition for receiving:~~

~~(1) approval to authorize use of certain restricted-use or state-limited-use pesticides;~~

~~(2) federal funding for licensing or certification of pesticide applicators;~~

~~(3) federal funding for pesticide law enforcement efforts; or~~

~~(4) other federal funding related to pesticide risk reduction.~~

~~(g) The other provisions of this chapter notwithstanding, if the U.S. Environmental Protection Agency or another federal agency imposes on the state standards for certification of commercial, noncommercial, or private pesticide applicators, the department may adopt by rule the federal standards for each classification of applicators for which the federal standards are imposed.~~

SECTION 90. Section 76.106, Agriculture Code, is amended to read as follows:

Sec. 76.106. CLASSIFICATION OF ~~[COMMERCIAL—AND NONCOMMERCIAL]~~ LICENSES. (a) The head of each regulatory agency may classify commercial applicator and noncommercial applicator licenses under subcategories of license use categories according to the subject, method, or place of pesticide application.

(b) A regulatory agency head shall establish separate testing requirements for licensing in each license use category for which the agency is responsible and may establish separate testing requirements for licensing in subcategories within a license use category.

(c) Each regulatory agency may charge a nonrefundable testing fee of not more than \$20 for testing in each license use category.

SECTION 91. Section 76.107, Agriculture Code, is amended to read as follows:

Sec. 76.107. LICENSING ~~[CERTIFICATION]~~ BY MORE THAN ONE AGENCY. (a) A person who wants to be licensed ~~[certified]~~ as a pesticide applicator under license use categories regulated by more than one regulatory agency may do so by paying a single license fee to the agency regulating the person's primary business and meeting licensing ~~[certification]~~ requirements for each category for which the person desires licensing ~~[certification]~~.

(b) A person licensed ~~[certified]~~ under this section must pay testing fees required by each regulatory agency.

SECTION 92. Subsections (a), (b), (d), (e), and (f), Section 76.108, Agriculture Code, are amended to read as follows:

(a) A person who operates a business or is an employee of a business that applies state-limited-use or restricted-use pesticides to the land of another person for hire or compensation and who is required to be licensed by Section 76.105 of this code shall apply to the appropriate regulatory agency for a commercial applicator license issued for the license use categories and subcategories in which the pesticide application is to be made.

(b) A person shall apply for an original or renewal commercial applicator license on forms prescribed by the regulatory agency. The application shall include information as required by rule of the head of the agency and must be accompanied by a nonrefundable ~~[an]~~ annual license fee of no more than \$150, as fixed by the head of the agency.

(d) The head of a regulatory agency may not issue a commercial applicator license if it has been determined that:

(1) the applicant has been convicted of a felony involving moral turpitude in the last five years;

(2) the applicant has had a license issued under this subchapter revoked within the last two years;

(3) the applicant, or the applicant's representative if the applicant is a business, has been unable to satisfactorily fulfill licensing ~~[certification]~~ requirements; or

(4) the applicant for any other reason cannot be expected to be able to fulfill the provisions of this subchapter applicable to the license use category for which application is made.

(e) An individual to whom a commercial applicator license is issued is ~~[a certified applicator]~~ authorized to use and supervise the use of restricted-use and state-limited-use pesticides in the license use categories and subcategories in which the individual is licensed.

(f) If a license is issued in the name of a business, the business must have a licensed ~~[certified]~~ applicator employed at all times. Failure to have a licensed

[certified] applicator employed is a ground for revocation of a business commercial applicator license.

SECTION 93. Subsections (b), (d), and (e), Section 76.109, Agriculture Code, are amended to read as follows:

(b) A person shall apply for an original or renewal noncommercial applicator license on forms prescribed by the regulatory agency. A nongovernmental applicant shall include with the application a nonrefundable [an] annual license fee of not more than \$100, as fixed by the head of the regulatory agency. A regulatory agency may not charge a governmental entity applicant a license fee.

(d) An individual to whom a noncommercial applicator license is issued is [a certified applicator] authorized to use and supervise the use of restricted-use and state-limited-use pesticides in the license use categories and subcategories in which the individual is licensed.

(e) If a license is issued in the name of a governmental entity, the entity must have a licensed [certified] applicator employed at all times. Failure to have a licensed [certified] applicator employed is a ground for revocation of a governmental entity noncommercial applicator license.

SECTION 94. Section 76.110, Agriculture Code, is amended to read as follows:

Sec. 76.110. COMMERCIAL AND NONCOMMERCIAL [CERTIFIED] APPLICATOR EXAMINATION; RECIPROCAL AGREEMENTS. (a) Each person applying for a license as a commercial [certified] applicator or a noncommercial applicator must pass an examination demonstrating that the person:

(1) is properly qualified to perform functions associated with pesticide application to a degree directly related to the nature of the activity and the associated responsibility; and

(2) has knowledge of the use and effects of restricted-use and state-limited-use pesticides in the license use categories and subcategories in which the person is to be licensed.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this section, the appropriate regulatory agency shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the appropriate regulatory agency shall notify examinees of the results of the examination not later than the 14th day after the date on which the appropriate regulatory agency receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the appropriate regulatory agency shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by the person who fails a licensing examination administered under this section, the appropriate regulatory agency shall furnish the person with an analysis of the person's performance on the examination.

(d) The head of a regulatory agency may waive part or all of any license examination requirements on a reciprocal basis with any other state or federal agency that has substantially the same examination standards.

SECTION 95. Section 76.111, Agriculture Code, is amended to read as follows:

Sec. 76.111. COMMERCIAL APPLICATOR PROOF OF FINANCIAL RESPONSIBILITY. (a) Except as otherwise provided by this section, each applicant for a commercial applicator license shall file with the regulatory agency issuing the license:

(1) a bond executed by the applicant as principal and by a corporate surety licensed to do business in Texas as surety; or

(2) a liability insurance policy, or certification of a policy, protecting persons who may suffer damages as a result of the operations of the applicant.

(b) If an applicant cannot reasonably obtain insurance coverage or a bond as specified by Subsection (f) of this section, the regulatory agency shall accept a certificate of deposit or a letter of credit that meets the requirements of Subsection (c)(1) and rules adopted under Subsection (e) of this section.

(c) If the State Board of Insurance determines after giving notice to the regulatory agency that the liability insurance policy required by Subsection (a)(2) of this section is not generally and reasonably available to commercial pesticide applicators, then in lieu of the requirements of Subsection (a) of this section, an applicant for a commercial applicator license may:

(1) tender from a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation a certificate of deposit or letter of credit in the amount prescribed by Subsection (f) of this section, made payable to the regulatory agency and issued for the purpose of protecting persons who may suffer damages as a result of the operations of the applicant;

(2) file property damage and personal injury insurance or certification of such insurance that is generally and reasonably available as determined by the State Board of Insurance; or

(3) comply with other proof of financial responsibility requirements adopted by rule of the regulatory agency under this subchapter.

(d) The proof of financial responsibility required by this section is not required to apply to damages or injury to agricultural crops, plants, or land being worked on by the applicant.

(e) The proof of financial responsibility required by this section must be approved by the regulatory agency and conditioned on compliance with the requirements of this chapter and rules adopted under this chapter.

(f) Except as otherwise provided by this section, the amount of the proof of financial responsibility may not be less than ~~[\$5,000 nor more than]~~ \$100,000 for property damage and may not be less than \$100,000 ~~[\$5,000]~~ for bodily injury. The head of a regulatory agency by rule may require different amounts of coverage for different classifications of operations under this chapter. At all times during the license period, the coverage must be maintained at not less than the amount set by the agency head or the State Board of Insurance, as applicable.

(g) At least 10 days before a reduction requested by a licensee or a cancellation of a bond or liability insurance policy, the party taking the action shall notify the head of the appropriate regulatory agency. If the party does not give that notice, the liability of the surety or insurer is limited to the bond or liability insurance policy.

(h) The head of a regulatory agency may accept a bond or liability insurance policy in the proper sum which has a deductible clause in an amount of not more than \$1,000 for the total amount of the bond or liability insurance policy required by this section. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, an agency head may not accept a bond or policy with a deductible clause unless the applicant furnishes the agency with a surety bond that satisfies the amount of the deductible clause as to all claims that may arise as a result of the applicant's operation.

(i) ~~(h)~~ The department shall exempt a commercial applicator from the requirements of showing proof of financial responsibility under this section if the applicator agrees:

(1) to a license for use of ground application equipment only; and

(2) to a license that limits the application to only those herbicides determined by the department not to create a substantial risk of drift because of volatility.

(j) [(j)] Should the surety furnished under this section become insufficient or otherwise unsatisfactory, a licensee shall, on notice of the insufficiency or other defect, immediately file a new bond, liability insurance policy, or any other proof of financial responsibility as authorized by rule of the regulatory agency. A licensee may not operate as a commercial applicator during an uncovered period. Failure to file a bond, liability insurance policy, or other proof of authorized financial responsibility or failure to maintain the surety in the required amount is a ground for suspension or revocation of a commercial applicator license.

(k) [(j)] The regulatory agency by rule may prescribe acceptable proof of financial responsibility and appropriate procedures to carry out the purposes of this section. The regulatory agency may adopt rules governing the conditions and handling of certificates of deposit and letters of credit, but may not disburse funds or release a certificate or letter except by consent of the commercial applicator or pursuant to court order.

SECTION 96. Section 76.112, Agriculture Code, is amended to read as follows:

Sec. 76.112. PRIVATE APPLICATOR. (a) A person is a private applicator if the person uses or supervises the use of a restricted-use or state-limited-use pesticide for the purpose of producing an agricultural commodity:

(1) on property owned or rented by the person or the person's employer or under the person's general control; or

(2) on the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.

(b) A private applicator is [not] required to be either licensed or certified to use restricted-use or state-limited-use pesticides.

(c) ~~The department may establish a voluntary program to certify private applicators who wish to apply restricted-use pesticides in compliance with federal law.~~

[(d)] An employee qualifies as a private applicator under Subdivision (1) of Subsection (a) of this section only if he is employed to perform other duties related to agricultural production and provide labor for the pesticide application but does not provide the necessary equipment or pesticide.

(d) A private applicator who is required to be licensed by Section 76.105 of this code shall apply to the appropriate regulatory agency for a private applicator license.

(e) A person shall apply for an original or renewal private applicator license on forms prescribed by the regulatory agency. The application shall include information as required by agency rule and must be accompanied by a nonrefundable fee of \$50.

(f) The head of a regulatory agency may not issue an original private applicator license before the applicant has attended a training course conducted by the Texas Agricultural Extension Service. The training course shall cover the use, effects, and risks of restricted-use and state-limited-use pesticides.

(g) The head of a regulatory agency may not issue a private applicator license if the applicant has had a license issued under this subchapter revoked within the last two years.

(h) An individual to whom a private applicator license is issued is authorized to use and supervise the use of restricted-use and state-limited-use pesticides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section.

(i) As a condition to issuance of a private applicator license, an applicant located outside this state shall file with the regulatory agency a written instrument designating a resident agent for service of process in actions taken in administration and enforcement of this chapter. Instead of designating a resident agent, the

applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.

(j) For purposes of this chapter, a certified private applicator is a private applicator who has been previously certified under the department's voluntary certification program and who holds a private applicator certificate dated prior to January 10, 1989. A certified private applicator is authorized to use restricted-use and state-limited-use pesticides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section.

SECTION 97. Section 76.113, Agriculture Code, is amended to read as follows:

Sec. 76.113. EXPIRATION AND RENEWAL OF LICENSES. (a) Each commercial applicator or noncommercial applicator license expires on the last day of February of the year following the year in which it was issued.

(b) Each private applicator license expires on the last day of February of the fifth year following the year in which it was issued.

(c) Except as provided by Subsection (d) ~~[(e)]~~ of this section, a person having a valid ~~[current commercial or noncommercial applicator]~~ license issued under this subchapter may renew the license for another term ~~[year]~~ without retesting by paying to the regulatory agency the ~~[annual]~~ license fee required by this subchapter. A person who fails to apply for renewal of a license on or before the expiration date must pay, in addition to the annual license fee, the late fee provided by Section 12.024 of this code.

(d) ~~[(e)]~~ A licensee must undertake training, submit to retesting, or both, before renewal of a license if the head of the agency determines that additional knowledge is required ~~[in the license use categories or subcategories in which the licensee applies]~~ for renewal.

SECTION 98. Subsections (a) and (b), Section 76.114, Agriculture Code, are amended to read as follows:

(a) A regulatory agency shall require each commercial applicator and noncommercial applicator licensee to maintain records of the licensee's use of pesticides. The regulatory agency by rule shall prescribe the information to be included in the records.

(b) A regulatory agency may require a commercial applicator and noncommercial applicator licensee to keep records of the licensee's application of a specific restricted-use or state-limited-use pesticide and may require those records to be kept separate from other business records.

SECTION 99. Section 76.116, Agriculture Code, is amended to read as follows:

Sec. 76.116. SUSPENSION, MODIFICATION, OR REVOCATION OF LICENSE. (a) The head of a regulatory agency that licensed or certified an ~~[a certified]~~ applicator may suspend, modify, or revoke any provision in the license or certificate, assess an administrative penalty, place on probation a person whose license or certificate has been suspended, or reprimand a licensee or certificate holder ~~[of the certified applicator]~~ if the head of the agency finds that the licensee or certificate holder has:

(1) made a pesticide recommendation or application inconsistent with the pesticide's labeling or with the restrictions on the use of the pesticide imposed by the state or the Environmental Protection Agency;

(2) operated in a faulty, careless, or negligent manner;

(3) refused, or after notice, failed to comply with an applicable provision of this chapter, a rule adopted under this chapter, or a lawful order of the head of a regulatory agency by which the licensee is licensed;

(4) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required by this chapter;

(5) failed to maintain a bond or policy of insurance as required by this chapter;

(6) made false or fraudulent records, invoices, or reports;

(7) used fraud or misrepresentation in making an application for a license or renewal of a license; or

(8) aided or abetted a certified, licensed, or an unlicensed person to evade the provisions of this chapter, conspired with a certified, licensed, or an unlicensed person to evade the provisions of this chapter, or allowed the licensee's license or the certificate holder's certificate to be used by another person.

(b) A regulatory agency may temporarily suspend a license or certificate under this section for not more than 10 days after giving the licensee or certificate holder written notice of noncompliance.

(c) If a license or certificate suspension is probated, the regulatory agency may require the person to:

(1) report regularly to the agency on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the agency; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the agency in those areas that are the basis of the probation.

(d) Except for a temporary suspension under Subsection (b) of this section, if the regulatory agency proposes to suspend, modify, or revoke a person's license or certificate, the person is entitled to a hearing before a hearings officer designated by the agency. The agency shall prescribe procedures by which all decisions to suspend, modify, or revoke are appealable to the governing officer or board of the agency. [In order to suspend a license for more than 10 days or to modify or revoke a license, the regulatory agency shall conduct a hearing on the action. The hearing must be held before the 11th day following the day on which the agency issues written notice to the licensee of the time, place, and nature of the hearing.]

SECTION 100. Subsection (a), Section 76.131, Agriculture Code, is amended to read as follows:

(a) The department may adopt rules governing the storage and disposal of pesticides and pesticide containers for the purpose of:

(1) preventing injury from storage or disposal to man, vegetation, crops, or animals; and

(2) preventing any waterway pollution that is harmful to man or wildlife provided, however, that such rules be consistent with Texas Water Commission rules adopted under Chapter 26 of the Water Code.

SECTION 101. Chapter 76, Agriculture Code, is amended by adding Section 76.1555 to read as follows:

Sec. 76.1555. ADMINISTRATIVE PENALTY. (a) If a person violates a provision of Chapter 75 or 76 of this code administered by the department or a rule or order adopted by the department under either of those chapters, the department may assess an administrative penalty against the person as provided by this section.

(b) The penalty may be in an amount not to exceed \$2,000 for each violation, provided that the penalty shall not exceed \$4,000 for all violations related to a single incident. The department shall establish a schedule stating the types of violations possible under Chapters 75 and 76 of this code and the maximum fine applicable to each type of violation. The department is not required to comply with Section 5, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), when establishing or revising the schedule. The department shall publish the initial schedule and any subsequent revision in the Texas Register before the schedule or revision is implemented.

(c) In determining the amount of the penalty, the department shall consider:
(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public;

(2) the economic damage to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department may issue a violation report stating the facts on which the conclusion that a violation occurred is based and may recommend that an administrative penalty under this section be imposed on the person charged and recommending the amount of that proposed penalty. The department shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set forth in Subsection (c) of this section.

(e) Not later than the 14th day after the date on which the report is issued, the department shall give written notice of the report to the person charged. The notice shall include a brief summary of the charges, a statement of the amount of the penalty, if any is recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is received, the person charged either may accept the determination of the department made under Subsection (d) of this section, including the recommended penalty, or make a written request for a hearing on the determination.

(g) If the person charged with the violation accepts the determination of the department, the commissioner shall issue an order approving the determination and ordering the payment of the recommended penalty.

(h) If the person charged requests a hearing or fails to timely respond to the notice, the department shall set a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the department. The hearing examiner shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact, conclusions of law, and recommendations of the hearing examiner, the commissioner by order may find a violation has occurred and may assess a penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The department shall give notice of the commissioner's order to the person charged. The notice shall include:

(1) the findings of fact and conclusions of law separately stated;

(2) the amount of the penalty ordered, if any;

(3) a statement of the right of the person charged to judicial review of the commissioner's order, if any; and

(4) other information required by law.

(j) Within the 30-day period immediately following the day on which the order becomes final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty, post a supersedeas bond in a form approved by the department for the amount of the penalty or \$1,000, whichever is less, the bond to be effective until all judicial review of the order or decision is final.

(k) A bond under Subsection (j)(2) of this section must be posted with the district clerk. The bond must be filed at the same time the petition for judicial review is filed.

(l) If a person charged is financially unable to post a supersedeas bond, the person may satisfy the requirements of Subsection (j)(2) of this section by filing with the district clerk an affidavit sworn by the person charged stating that the person is financially unable to post a bond.

(m) Failure to post the bond or file the affidavit within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to pay the penalty in full as provided under Subsection (j)(1) of this section or post the bond or file the affidavit as provided by Subsection (j) or (l) of this section, the department may forward the matter to the attorney general for enforcement.

(n) Judicial review of the order or decision of the department assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(o) On final judgment of the court and payment of any penalties and costs assessed by the court, the department shall execute a release of any supersedeas bond posted under this section.

(p) A penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund.

(q) If the department elects to assess an administrative penalty, no action for a civil penalty may be based on the same violation or violations.

SECTION 102. Section 76.156, Agriculture Code, is amended to read as follows:

Sec. 76.156. CIVIL PENALTY. (a) A person who violates a provision of this chapter administered by a regulatory agency other than the department or a rule adopted by a regulatory agency other than the department under this chapter is liable for a civil penalty of not less than \$50 nor more than \$1,000 for each day on which the violation occurs.

(b) A person who violates a provision of this chapter administered by the department or a rule adopted by the department under this chapter is liable for a civil penalty of not less than \$50 nor more than \$10,000 for each violation, provided that the penalty shall not exceed \$25,000 for all violations related to a single incident.

(c) No civil penalty may be collected for any violation that constituted the basis for a department proceeding to assess an administrative penalty, regardless of whether the department was or was not successful in collecting the administrative penalty.

(d) A county attorney, a district attorney, or the attorney general shall sue in the name of the state for the collection of a civil penalty provided by this section.

(e) [(e)] The appropriate regulatory agency may request an appropriate prosecuting attorney or the attorney general to bring suit under this section.

(f) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall

be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

SECTION 103. Section 76.182, Agriculture Code, is amended to read as follows:

Sec. 76.182. APPEAL OF PERMIT OR LICENSE DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION. (a) A person whose application for an experimental use permit, pesticide dealer license, commercial applicator license, ~~[or] noncommercial applicator license, or private applicator license~~ has been denied or whose experimental use permit, pesticide dealer license, commercial applicator license, ~~[or] noncommercial applicator license, private applicator license, or private applicator certificate~~ has been suspended for more than 10 days, revoked, or modified may appeal the action in the manner provided for appeal of contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) Appeal under this section is governed by the substantial evidence rule.

SECTION 104. Subsection (b), Section 76.201, Agriculture Code, is amended to read as follows:

(b) A person commits an offense if the person:

(1) detaches, alters, defaces, or destroys, wholly or in part, any label or labeling provided for by this chapter or a rule adopted under this chapter;

(2) adds any substance to or takes any substance from a pesticide in a manner that may defeat the purpose of this chapter or a rule adopted under this chapter;

(3) uses or causes to be used a pesticide contrary to its labeling or to a rule of the department limiting the use of the pesticide;

(4) handles, transports, stores, displays, or distributes a pesticide in a manner that violates a provision of this chapter or a rule adopted by the department under this chapter; or

(5) disposes of, discards, or stores a pesticide or pesticide container in a manner that the person knows or should know is likely to:

~~[(A)] cause injury to man, vegetation, crops, livestock, wildlife, or pollinating insects;~~ or

~~[(B)] pollute a water supply or waterway].~~

* SECTION 105. Subsection (e), Section 76.201, Agriculture Code, is amended to read as follows:

(e) A person commits an offense if the person knowingly or intentionally uses, causes to be used, handles, stores, or disposes of a pesticide in a manner that causes injury to man, vegetation, crops, livestock, wildlife, or pollinating insects ~~[bodily injury to a human being or pollution of a water supply. For purposes of this subsection, "pollution" means the alteration of the physical, chemical, or biological quality of, or the contamination of water in the state that renders the water harmful, detrimental, or injurious to humans or to public health, safety, or welfare].~~

SECTION 106. Subsection (c), Section 78.045, Agriculture Code, is amended to read as follows:

(c) A person commits an offense if the person fails to obey a rule prescribed under Subsection (a) of this section. An offense under this subsection is a Class C misdemeanor ~~[punishable by a fine of not less than \$25 nor more than \$250].~~

SECTION 107. Subsection (b), Section 91.008, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor ~~[punishable by a fine of not more than \$100].~~

SECTION 108. Section 92.042, Agriculture Code, is amended to read as follows:

Sec. 92.042. PENALTY. An offense under Section 92.041 of this subchapter is a Class C misdemeanor ~~[punishable by a fine of not more than \$200].~~

SECTION 109. Section 93.062, Agriculture Code, is amended to read as follows:

Sec. 93.062. PENALTY. An offense under Section 93.061 of this code is a Class B misdemeanor ~~[punishable by:~~

~~[(1) a fine of not more than \$500;~~

~~[(2) confinement in county jail for not more than 90 days; or~~

~~[(3) both fine and confinement under this section].~~

SECTION 110. Section 94.052, Agriculture Code, is amended to read as follows:

Sec. 94.052. PENALTY. An offense under Section 94.051 of this code is a Class B misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$25 nor more than \$500;~~

~~[(2) confinement for not more than six months; or~~

~~[(3) both fine and confinement under this section].~~

SECTION 111. Section 95.042, Agriculture Code, is amended to read as follows:

Sec. 95.042. PENALTY. An offense under Section 95.041 of this code is a Class B misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$25 nor more than \$500;~~

~~[(2) confinement for not more than six months; or~~

~~[(3) both fine and confinement under this section].~~

SECTION 112. Section 101.012, Agriculture Code, is amended to read as follows:

Sec. 101.012. REVOCATION, MODIFICATION, OR SUSPENSION ~~[CANCELLATION]~~ OF LICENSE OR IDENTIFICATION CARD. (a) The department shall revoke, modify, or suspend a license or identification card, assess an administrative penalty, place on probation a person whose license or identification card has been suspended, or reprimand a licensee or the transporting or buying agent of a licensee for a violation of this chapter or a rule adopted by the department under this chapter [On complaint of any person aggrieved, injured, or damaged as a result of a violation of this chapter by a licensee or the transporting agent or buying agent of a licensee, the department shall conduct a hearing on the cancellation of the licensee's license or the agent's identification card. The complaint must be filed within 12 months after the date of the act that aggrieved, injured, or damaged the complaining party].

(b) If a suspension of a license or identification card is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation [If, following the hearing, the department finds that the evidence warrants cancellation of the license or identification card, the department shall issue an order canceling the license or card].

(c) If the department proposes to revoke, modify, or suspend a person's license or identification card, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [The department shall conduct the hearing under this section, and the person whose license or identification card is canceled may appeal the decision of the department;

in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The department may recess the hearing from day to day as justice requires].

SECTION 113. Chapter 101, Agriculture Code, is amended by adding Section 101.0185 to read as follows:

Sec. 101.0185. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief.

SECTION 114. Section 101.019, Agriculture Code, is amended to read as follows:

Sec. 101.019. VENUE OF CIVIL OR CRIMINAL ACTION. The venue of a civil action or criminal prosecution instituted under this chapter is in the county in which the violation occurred, is occurring, or is threatened or in which the vegetables were received by the licensee, packer, or warehouseman.

SECTION 115. Section 102.012, Agriculture Code, is amended to read as follows:

Sec. 102.012. REVOCATION, MODIFICATION, OR SUSPENSION [CANCELLATION] OF LICENSE OR IDENTIFICATION CARD. (a) The department shall revoke, modify, or suspend a license or identification card, assess an administrative penalty, place on probation a person whose license or identification card has been suspended, or reprimand a licensee or the transporting or buying agent of a licensee for a violation of this subchapter or a rule adopted by the department under this subchapter [On complaint of any person aggrieved, injured, or damaged as a result of a violation of this subchapter by a licensee or the transporting agent or buying agent of a licensee, the department shall conduct a hearing on the cancellation of the licensee's license or the agent's identification card. The complaint must be filed within 12 months after the date of the act that aggrieved, injured, or damaged the complaining party].

(b) If a suspension of a license or identification card is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation[; following the hearing, the department finds that the evidence warrants cancellation of the license or identification card, the department shall issue an order canceling the license or card].

(c) If the department proposes to revoke, modify, or suspend a person's license or identification card, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [The department shall conduct the hearing under this section, and the person whose license or identification card is canceled may appeal the decision of the department; in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The department may recess the hearing from day to day as justice requires].

SECTION 116. Chapter 102, Agriculture Code, is amended by adding Section 102.0195 to read as follows:

Sec. 102.0195. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief.

SECTION 117. Section 102.020, Agriculture Code, is amended to read as follows:

Sec. 102.020. VENUE OF CIVIL OR CRIMINAL ACTION. The venue of a civil action or criminal prosecution instituted under this subchapter is in the county in which the violation occurred, is occurring, or is threatened or in which the citrus fruit was received by the licensee, packer, or warehouseman.

SECTION 118. Subsection (b), Section 102.104, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$100 nor more than \$500;~~

~~[(2) confinement in jail for not less than 30 days nor more than 6 months; or~~

~~[(3) both fine and confinement under this subsection].~~

SECTION 119. Chapter 102, Agriculture Code, is amended by adding Section 102.1045 to read as follows:

Sec. 102.1045. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 120. Subsection (b), Section 102.171, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor ~~[punishable by:~~
~~{(1) a fine of not less than \$50 nor more than \$500;~~
~~{(2) confinement for not less than 10 days nor more than 6 months;~~

or

~~{(3) both fine and confinement under this subsection}.~~

SECTION 121. Chapter 103, Agriculture Code, is amended by adding Section 103.0055 to read as follows:

Sec. 103.0055. BANKRUPTCY OF MERCHANT OR RETAILER. For purposes of this chapter, the amount due an aggrieved party by a commission merchant or retailer is not affected by a final judgment of a bankruptcy court that releases the commission merchant or retailer from the legal duty to satisfy the claim.

SECTION 122. Section 103.009, Agriculture Code, is amended by adding Subsection (d) to read as follows:

(d) This section does not apply to a commission merchant or retailer who is released by a final judgment of a bankruptcy court from the legal duty to satisfy the claim paid by the department.

SECTION 123. Chapter 103, Agriculture Code, is amended by adding Section 103.015 to read as follows:

Sec. 103.015. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 124. Subsection (c), Section 111.007, Agriculture Code, is amended to read as follows:

(c) An offense under ~~[Subsection (a) of]~~ this section is a Class C misdemeanor ~~[punishable by a fine of not less than \$25 nor more than \$200. An offense under Subsection (b) of this section is a misdemeanor punishable by a fine of not more than \$25].~~

SECTION 125. Subsection (b), Section 112.009, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor ~~[punishable by a fine of not less than \$25 nor more than \$200].~~

SECTION 126. Subsection (b), Section 121.010, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor ~~[punishable by a fine of not less than \$50 nor more than \$100].~~

SECTION 127. Subsection (b), Section 132.025, Agriculture Code, is amended to read as follows:

(b) An applicant for the renewal of a license ~~must [shall]~~ pay the license fee during the last month of the ~~[August preceding the next]~~ license year. A person who fails to apply for a renewal license on or before the expiration date must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

SECTION 128. Chapter 132, Agriculture Code, is amended by adding Section 132.0715 to read as follows:

Sec. 132.0715. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty in a legal action on behalf of the state.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 129. Section 132.072, Agriculture Code, is amended to read as follows:

Sec. 132.072. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.

(b) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). [If a person is convicted of an offense under this chapter, the department may suspend that person's license for a period not to exceed 90 days.]

SECTION 130. Section 13.09, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13.09. APPLICATION. The state agencies subject to this article are:

- (1) the Texas Department of Mental Health and Mental Retardation;
- (2) the Texas Department of Human Services; ~~and~~
- (3) the Texas Department of Corrections; and
- (4) the Department of Agriculture.

SECTION 131. The following subsections of the Agriculture Code are repealed:

- (1) Section 71.045;
- (2) Subsection (d), Section 75.005;
- (3) Subsection (d), Section 101.018;
- (4) Subsection (e), Section 101.018;
- (5) Subsection (d), Section 102.019; and
- (6) Subsection (e), Section 102.019.

SECTION 132. The first policy statement required to be filed under Subsection (c), Section 12.013, Agriculture Code, as amended by this Act, must be filed before November 1, 1989.

SECTION 133. The Department of Agriculture shall file the initial policies established under Section 12.029, Agriculture Code, as added by this Act, with the State Purchasing and General Services Commission and the Texas Department of Commerce not later than September 1, 1990.

SECTION 134. Notwithstanding the requirements of Section 12.0145, Agriculture Code, as added by this Act, the Department of Agriculture, for the fiscal bienniums ending August 31, 1993, and August 31, 1995, shall submit proposed fee schedules that would recover 50 percent of all direct costs of administering each nonexempt program.

SECTION 135. Notwithstanding Section 13.09, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by this Act, and Section 12.027, Agriculture Code, as added by this Act, the competitive cost review provisions, until September 1, 1991, are applicable only to the warehousing and mail handling functions of the Department of Agriculture.

SECTION 136. Notwithstanding Section 76.112, Agriculture Code, as amended by this Act, the Department of Agriculture may suspend for the initial license term the initial training requirement of all private applicator license applicants who have a current private applicator certificate obtained under the department's voluntary program. Those applicants shall attend an initial training program before receiving a renewal license.

SECTION 137. Notwithstanding Section 76.113, Agriculture Code, as amended by this Act, the Department of Agriculture may adopt a system that will stagger the private applicator license renewals over a five-year period. If such a system is adopted, the license fee shall be prorated so that each licensee shall pay only that portion of the license fee that is allocable to the number of years during which the license is valid.

SECTION 138. Notwithstanding Section 76.105, Agriculture Code, as amended by this Act, a private applicator is not required to be licensed to use or supervise the use of a restricted-use or state-limited-use pesticide before January 1, 1990, unless this provision conflicts with a federal law, rule, or court order.

SECTION 139. (a) This Act applies only to an offense or other violation committed on or after the effective date of this Act. For purposes of this section, an offense or other violation is committed before the effective date of this Act if any element of the offense or violation occurs before that date.

(b) An offense or violation committed before the effective date of this Act is covered by the law in effect when the offense or violation was committed, and the former law is continued in effect for this purpose.

SECTION 140. Section 103.0055, Agriculture Code, as added by this Act, applies only to claims filed with the Department of Agriculture on or after the effective date of this Act.

SECTION 141. The change in the law made by Section 2 of this Act applies only to elections held or appointments made on or after the effective date of this Act.

SECTION 142. The sum of \$100,000 is appropriated, for each year of the fiscal biennium ending August 31, 1991, from the General Revenue Fund to the Agriculture Resources Protection Authority for the purpose of performing authority powers and duties under Section 76.009, Agriculture Code, as added by this Act.

SECTION 143. This Act takes effect September 1, 1989.

SECTION 144. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE BILL 1525 WITH HOUSE AMENDMENTS

Senator Ratliff called S.B. 1525 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment - Wentworth

Amend C.S.S.B. 1525 on page 5 by deleting lines 12-15 and substituting the following:

"(b) In the enforcement of Subdivisions (2) and (3) of Subsection (a) of this section, consideration shall be given to the state of existing technology, economic feasibility, and the water quality needs of the water that might be affected."

Floor Amendment on Third Reading - Wentworth

Amend C.S.S.B. 1525 by inserting the following language between lines 16 and 17, page 5, of the House Committee Report version:

"This subsection does not apply to an enforcement action against any discharges which are required to have an NPDES permit."

The amendments were read.

Senator Ratliff moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on S.B. 1525 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ratliff, Chairman; Sims, Brown, Bivins and Montford.

SENATE BILL 1085 WITH HOUSE AMENDMENT

Senator McFarland called **S.B. 1085** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - Patterson

Amend **S.B. 1085** as follows:

(1) Add a new Section 5 to read as follows:

SECTION 5. Chapter 102, Code of Criminal Procedure, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. COUNTY JAIL FUND

Art. 102.081. FEES ON CONVICTION. A defendant convicted of a felony or convicted of a misdemeanor other than an offense regulating pedestrians or the parking of motor vehicles under the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes) shall pay a \$10 fee.

Art. 102.082. COLLECTION AND REMITTANCE OF FEES. (a) An officer collecting a fee under this subchapter in municipal court shall remit the fee to the custodian of the municipal treasury. The custodian of the municipal treasury may deposit the fee in an interest-bearing account.

(b) On or before the last day of the month following each calendar quarter, the custodian of the municipal treasury shall remit the fees to the custodian of the county treasury. Each fee collected shall be remitted to the county in which the offense occurred. The custodian of the municipal treasury may retain the interest as a service fee.

(c) An officer collecting fees under this subchapter in justice, county, and district courts shall remit the fees to the custodian of the county treasury.

Art. 102.083. COUNTY JAIL FUND. The custodian of the county treasury shall deposit fees remitted to the custodian under this subchapter into a special fund in the county treasury to be known as the county jail fund. The commissioners court may expend money from the county jail fund solely for the purposes of acquiring, constructing, maintaining, or operating county jail facilities.

(2) Add a new Section 12 to read as follows:

SECTION 12. Section 5 of this Act applies only to the imposition of a fee on conviction of an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(3) Renumber sections of the bill appropriately.

The amendment was read.

Senator McFarland moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 1085** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators McFarland, Chairman; Glasgow, Montford, Harris and Parker.

SENATE BILL 783 WITH HOUSE AMENDMENT

Senator Whitmire called S.B. 783 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Polumbo

Amend S.B. 783 by striking all below the enacting clause and substituting the following:

SECTION 1. Sections 143.010(d) and (g), Local Government Code, are amended to read as follows:

(d) The commission may issue subpoenas and subpoenas duces tecum for the attendance of witnesses and for the production of documentary material. A municipal employee who is subpoenaed is entitled to receive pay for the time the person's presence is required as if the person were on the person's regularly assigned duty.

(g) The commission shall conduct the hearing fairly and impartially as prescribed by this chapter and shall render a just and fair decision. The commission may consider only the evidence submitted at the hearing, and the provisions of Section 143.0105 apply. In a hearing relating to the appeal or review of an action of the department head that affects a fire fighter or police officer, the department head has the burden to prove each material fact that is an issue in the appeal or review.

SECTION 2. Sections 143.057(d) and (f), Local Government Code, are amended to read as follows:

(d) If the appealing fire fighter or police officer chooses to appeal to a hearing examiner, the fire fighter or police officer and the department head, or their designees, shall first attempt to agree on the selection of an impartial hearing examiner. If the parties do not agree on the selection of a hearing examiner on or within 10 days after the date the appeal is filed, the director shall immediately request a list of seven qualified neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service, or their successors in function. The fire fighter or police officer and the department head, or their designees, may agree on one of the seven neutral arbitrators on the list. If they do not agree within five working days after the date they received the list, each party or the party's designee shall alternate striking a name from the list and the name remaining is the hearing examiner. The parties or their designees shall agree on a date for the hearing. Within five working days after the date the hearing examiner is chosen, the director shall send to the hearing examiner:

- (1) the name of the appealing fire fighter or police officer;
- (2) the written reasons filed by the department head with the commission in the case of a promotional passover or a recommended demotion;
- (3) the written statement filed by the department head with the commission in the case of a suspension; and
- (4) the date and place of any alleged civil service rule violation.

(f) In each hearing conducted under this section, the hearing examiner has the same duties and powers as the commission, including the right to issue subpoenas. The department head has the burden to prove each material fact that is an issue in

the appeal. The department head is restricted to the written reasons or statement sent to the hearing examiner under Subsection (d). Section 143.0105 applies to each appeal under this section.

SECTION 3. Subchapter A, Chapter 143, Local Government Code, is amended by adding Section 143.0105 to read as follows:

Sec. 143.0105. EX PARTE COMMUNICATIONS. (a) While any matter subject to a hearing conducted under Section 143.010, 143.057, 143.1015, 143.130, or 143.131 is pending, a person may not, except in giving sworn testimony at the hearing or as otherwise provided by law, communicate with the commission, a hearing examiner, or a grievance examiner regarding the facts of the matter under consideration.

(b) If the commission, hearing examiner, grievance examiner, or a court of competent jurisdiction determines that a person has violated Subsection (a) on behalf of and with the knowledge of the fire fighter or police officer who filed the appeal, request for a review, or grievance, a ruling shall be entered that dismisses the appeal, review, or grievance. If the commission, hearing examiner, grievance examiner, or a court of competent jurisdiction determines that a person has violated Subsection (a) on behalf of or in favor of the department head or the department head's representative, or on behalf of and with the knowledge of a person against whom a grievance was filed, a ruling shall be entered that upholds the position of the fire fighter or police officer that filed the appeal, request for a review, or grievance.

(c) While any matter subject to a meeting under the grievance procedures of Sections 143.128 and 143.129 is pending, a person may not, except at the meeting or as otherwise provided by law, communicate with the aggrieved fire fighter's or police officer's immediate supervisor, a person against whom the grievance is lodged, the department head, or the department head's representative who may attend the meeting regarding the facts of the matter under consideration. If it is alleged that a person violated this subsection, the grievance examiner at a hearing under Section 143.130 shall consider the matter. If the grievance examiner determines that a person violated this subsection on behalf of and with the knowledge of the aggrieved fire fighter or police officer, the grievance examiner shall make a finding to that effect and recommend a resolution of the grievance in favor of the person against whom the grievance was lodged. If the grievance examiner determines that a person violated this subsection on behalf of or in favor of the department head or on behalf of and with the knowledge of a person against whom the grievance was filed, the grievance examiner shall make a finding to that effect and recommend a resolution of the grievance in favor of the aggrieved fire fighter or police officer.

SECTION 4. Section 143.134, Local Government Code, as amended by Senate Bill 220, 71st Legislature, Regular Session, 1989, is amended by adding Subsection (g) to read as follows:

(g) Section 143.0105 applies to the grievance procedure.

SECTION 5. (a) The provisions of this Act relating to ex parte communications apply only to communications made on or after the effective date of this Act.

(b) The provisions of this Act relating to information sent to a hearing examiner under Section 143.057, Local Government Code, apply only to hearings where the hearing examiner was chosen on or after the effective date of this Act.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Whitmire moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on S.B. 783 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Whitmire, Chairman; Brown, Washington, Green and Henderson.

SENATE BILL 88 WITH HOUSE AMENDMENT

Senator Brown called S.B. 88 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - Hilbert

Amend S.B. 88 by inserting new Sections 3 and 4 to read as follows and renumbering current Sections 3 and 4 appropriately:

SECTION 3. Section 152.087, Tax Code, is amended to read as follows:

Sec. 152.087. FIRE TRUCKS AND AMBULANCES. The taxes imposed by this chapter do not apply to the purchase, rental, or use of a fire truck, ambulance, or other motor vehicle used exclusively for fire-fighting purposes or for emergency medical services when purchased by:

(1) a volunteer fire department; or

(2) a nonprofit volunteer emergency medical service provider that receives a federal income tax exemption under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3), Internal Revenue Code of 1986.

SECTION 4. Section 152.001, Tax Code, is amended by adding Subdivisions (14) and (15) to read as follows:

(14) "Volunteer emergency medical service provider" means an organization that:

(A) provides emergency medical treatment, emergency rescue service, and emergency transportation of the sick and injured; and

(B) has a staff consisting of at least 75 percent unpaid volunteers.

(15) "Nonprofit" means:

(A) organized as a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); or

(B) organized and operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation other than reasonable compensation for services rendered by persons who are not members of the organization, or realization of any other form of private gain.

The amendment was read.

On motion of Senator Brown and by unanimous consent, the Senate concurred in the House amendment to S.B. 88 viva voce vote.

**CONFERENCE COMMITTEE REPORT
HOUSE BILL 340**

Senator Haley submitted the following Conference Committee Report:

Austin, Texas
May 20, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 340 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

HALEY
HARRIS
BARRIENTOS
SIMS
McFARLAND

On the part of the Senate

ARNOLD
WARNER
UHER

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE BILL 134 WITH HOUSE AMENDMENT

Senator Parker called S.B. 134 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - Parker

Amend S.B. 134 by striking all below the enacting clause and substituting the following:

SECTION 1. Subtitle D, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 52 to read as follows:

CHAPTER 52. SECURITY FOR JUDGMENTS PENDING APPEAL

Sec. 52.001. DEFINITION. In this chapter, "security" means a bond or deposit posted, as provided by the Texas Rules of Appellate Procedure, by a judgment debtor to suspend execution of the judgment during appeal of the judgment.

Sec. 52.002. BOND OR DEPOSIT FOR MONEY JUDGMENT. A trial court rendering a judgment that awards recovery of a sum of money, other than a judgment rendered in a bond forfeiture proceeding, a personal injury or wrongful death action, or a claim covered by liability insurance, or a workers' compensation claim, may set the security in an amount less than the amount of the judgment, interest, and costs if the trial court, after notice to all parties and a hearing, finds that:

(1) setting the security at an amount equal to the amount of the judgment, interest, and costs would cause irreparable harm to the judgment debtor; and

(2) setting the security at the lesser amount would not substantially decrease the degree to which a judgment creditor's recovery under the judgment would be secured after the exhaustion of all appellate remedies.

Sec. 52.003. REVIEW FOR SUFFICIENCY. In a manner similar to appellate review under Rule 49, Texas Rules of Appellate Procedure, of the sufficiency of the amount of security set by a trial court, an appellate court may review the sufficiency of the amount of security set by the trial court under Section 52.002.

Sec. 52.004. REVIEW FOR EXCESSIVENESS. (a) In a manner similar to appellate review under Rule 49, Texas Rules of Appellate Procedure, of the sufficiency of the amount of security set by a trial court, an appellate court may review for excessiveness the amount of security set by a trial court under:

(1) Section 52.002; or

(2) the Texas Rules of Appellate Procedure if security is not set under Section 52.002.

(b) If the appellate court finds that the amount of security is excessive, the appellate court may reduce the amount.

Sec. 52.005. CONFLICT WITH TEXAS RULES OF APPELLATE PROCEDURE. (a) To the extent that this chapter conflicts with the Texas Rules of Appellate Procedure, this chapter controls.

(b) Notwithstanding Section 22.004, Government Code, the supreme court may not adopt rules in conflict with this chapter.

(c) The Texas Rules of Appellate Procedure apply to any proceeding, cause of action, or claim to which Section 52.002 does not apply.

SECTION 2. Section 52.001, Property Code, is amended to read as follows:

Sec. 52.001. ESTABLISHMENT OF LIEN. Except as provided by Section 52.0011, a [A] first or subsequent abstract of judgment, when it is recorded and indexed in accordance with this chapter, constitutes a lien on the real property of the defendant located in the county in which the abstract is recorded and indexed, including real property acquired after such recording and indexing.

SECTION 3. Subchapter A, Chapter 52, Property Code, is amended by adding Section 52.0011 to read as follows:

Sec. 52.0011. ESTABLISHMENT OF LIEN PENDING APPEAL OF JUDGMENT. (a) A first or subsequent abstract of a judgment rendered by a court against a defendant, when it is recorded and indexed under this chapter, does not constitute a lien on the real property of the defendant if:

(1) the defendant has posted security as provided by law or is excused by law from posting security; and

(2) The court finds that the creation of the lien would not substantially increase the degree to which a judgment creditor's recovery under the judgment would be secured when balanced against the costs to the defendant after the exhaustion of all appellate remedies. A certified copy of the finding of the court must be recorded in the real property records in each county in which the abstract of judgment or a certified copy of the judgment is filed in the abstract of judgment records.

(b) The court may withdraw its finding under Subsection (a)(2) at any time the court determines, from evidence presented to it, that the finding should be withdrawn. The lien exists on withdrawal of the finding and on the filing of a certified copy of the withdrawal of the finding of the court in the real property records in each county in which the abstract of judgment or a certified copy of the judgment is filed in the abstract of judgment records.

SECTION 4. This Act takes effect September 1, 1989, and applies only to a judgment rendered on or after that date. A judgment rendered before the effective

date of this Act is governed by the law in effect at the time the judgment was rendered, and that law is continued in effect for that purpose.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Parker and by unanimous consent, the Senate concurred in the House amendment to **S.B. 134** viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 911 ADOPTED

Senator McFarland called from the President's table the Conference Committee Report on **S.B. 911**. (The Conference Committee Report having been filed with the Senate and read on Saturday, May 20, 1989.)

On motion of Senator McFarland, the Conference Committee Report was adopted viva voce vote.

HOUSE BILL 613 ON SECOND READING

On motion of Senator Sims and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 613, Relating to creation of the Texas rural economic development fund and assistance to rural Texas businesses; making an appropriation.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 613 ON THIRD READING

Senator Sims moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 613** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Leedom asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 1822 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1822, Relating to financial responsibility for a motor vehicle.

The bill was read second time.

Senator Green offered the following amendment to the bill:

Amend **H.B. 1822** as follows:

Amend SECTION 7, page 4, line 58 by adding the word not between the words 'shall' and 'relieve'.

The amendment was read and was adopted viva voce vote.

On motion of Senator Green and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1822 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1822** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1153 ON SECOND READING

On motion of Senator Haley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1153, Relating to an expelled student who enrolls in another school district.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1153 ON THIRD READING

Senator Haley moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1153** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 301 ON THIRD READING AND FINAL PASSAGE

The Senate resumed consideration of the following bill as unfinished business:

H.B. 301, Relating to the name, boundaries, board of directors, powers, and duties of the Cuero Hospital District of De Witt County, Texas.

(Final passage of the bill having been reconsidered on May 18, 1989.)

Question - Shall the bill be finally passed?

Senator Armbrister offered the following amendment to the bill:

Amend **H.B. 301** in Section 2 of the bill as follows:

(1) Strike Section 4A(c) (page 6, lines 12-16) and substitute the following:

(c) At the initial election, five directors shall be elected from single-member districts and two directors shall be elected from the District at large. The candidate receiving the highest number of votes from each single-member district is the director for that district and the two candidates receiving the highest number of

votes from the District at large are the directors for the District at large. The candidates elected from odd-numbered single-member districts at the initial election serve for a term of two years, and the candidates elected from the even-numbered single-member districts serve for a term of one year. The candidate elected from the District at large who received the highest number of votes serves for a term of two years, and the other candidate elected from the District at large serves for a term of one year.

(2) After the last sentence of Section 4A(g) (page 7, line 4) add the following:

The application must specify the number of the single-member district for which the applicant is to be a candidate or specify that the candidate wishes to represent the District at large.

(3) In Section 4A(h) (page 7, line 7) insert the following between “District.” and “An”:

A person who is elected to represent a single-member district or who is appointed to fill a vacancy for a single-member district must be a resident of that single-member district.

By unanimous consent, the amendment was read and was adopted viva voce vote.

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was again finally passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 153 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 153, Relating to the jurisdiction of the Webb County Court at Law.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 153 ON THIRD READING

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 153** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

GUESTS PRESENTED

The Presiding Officer (Senator Brooks in Chair) recognized the presence in the Senate Chamber of the following lieutenant governors from Turkey: Mehmet Baskoy, Amir Cicek, Cavit Erdogan, Huseyin Baskaya, Cezmi Gocer, Nurettin Guven.

The Senate welcomed these distinguished guests.

HOUSE BILL 2853 ON SECOND READING

Senator Dickson asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 2853, Relating to the establishment of Central Texas University as a four-year coeducational institution of higher education; granting the power of eminent domain.

There was objection.

Senator Dickson then moved to suspend the regular order of business and take up **H.B. 2853** for consideration at this time.

The motion prevailed by the following vote: Yeas 21, Nays 6.

Yeas: Armbrister, Barrientos, Brooks, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Johnson, Leedom, McFarland, Montford, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Bivins, Caperton, Krier, Lyon, Ratliff, Sims.

Absent: Brown, Henderson, Parker, Tejeda.

The bill was read second time.

(President in Chair)

Senator Caperton offered the following amendment to the bill:

Amend **H.B. 2853** in Section 3 by adding the following language after the word "only",

"after a review by the Coordinating Board and the Board's finding that there is a need for such an institution and".

The amendment was read and was adopted by the following vote: Yeas 16, Nays 13.

Yeas: Armbrister, Bivins, Brooks, Caperton, Carriker, Harris, Henderson, Johnson, Krier, Lyon, Montford, Parker, Ratliff, Santiesteban, Sims, Washington.

Nays: Barrientos, Brown, Dickson, Edwards, Glasgow, Green, Haley, Leedom, McFarland, Parmer, Truan, Whitmire, Zaffirini.

Absent: Tejeda, Uribe.

On motion of Senator Dickson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

RECORD OF VOTE

Senator Caperton asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**MOTION TO PLACE
HOUSE BILL 2853 ON THIRD READING**

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2853** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 21, Nays 7. (Not receiving four-fifths vote of Members present)

Yeas: Armbrister, Barrientos, Brooks, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, McFarland, Montford, Parmer, Tejada, Truan, Whitmire, Zaffirini.

Nays: Bivins, Caperton, Lyon, Parker, Ratliff, Sims, Washington.

Absent: Brown, Santiesteban, Uribe.

HOUSE BILL 1318 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1318, Relating to the right of possession and authority to sell well-site equipment abandoned at the site of an oil or gas well plugged or replugged by the Railroad Commission of Texas and providing for a criminal penalty.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1318 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1318** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1507 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1507, Relating to the regulation of anabolic steroids and human growth hormones under the Texas Controlled Substances Act and to requiring schools to post a copy of the law regarding steroids in school gymnasiums; providing criminal penalties.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1507 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1507** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 715 ON SECOND READING**

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 715, Relating to the composition of the board and to the continuation and functions of the Texas Guaranteed Student Loan Corporation.

The bill was read second time.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 715** on page 5, beginning on line 15 by deleting the following language: "The board may not delegate policy decisions or decisions to initiate new revenue generating services to the executive director and corporation employees."

The amendment was read and was adopted viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 715**, Section 14, Subsection (d), Sec. 57.47, Texas Education Code, as follows:

In the phrase "shall pay 50 percent of the statutory filing fee," delete the word "statutory."

Insert between the words "filing fee" and "in effect," the phrase "or other costs of court taxed and collected in advance that are."

The amendment was read and was adopted viva voce vote.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 715 ON THIRD READING**

Senator Parker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 715** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1312 ON SECOND READING

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1312, Relating to county work programs operated by the sheriff; providing a penalty.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1312 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1312** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1587 ON SECOND READING**

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1587, Relating to the quasi-judicial enforcement of certain ordinances by home-rule municipalities.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Amend **C.S.H.B. 1587** by deleting SECTION 2 and by renumbering the other SECTIONS accordingly.

The amendment was read and was adopted viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1587 ON THIRD READING**

Senator Brown moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1587** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 302 ON SECOND READING**

On motion of Senator Johnson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 302, Relating to the exemption of county food purchases from competitive bidding requirements.

The bill was read second time.

Senator Leedom offered the following amendment to the bill:

Amend **C.S.H.B. 302** by inserting the following sentence after "subsection." on page 2 line 15 to read as follows:

The purchasing officer taking telephone or written bids under this subsection shall maintain, on a form approved by the commissioners court, a record of all bids solicited and the vendors contacted. This record shall be kept in the purchasing office for a period of at least one year or until audited by the county auditor.

The amendment was read and was adopted viva voce vote.

On motion of Senator Johnson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 302 ON THIRD READING**

Senator Johnson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 302** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1118 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1118, Relating to the selection of a licensed psychologist by a recipient under the Medical Assistance Program.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1118 ON THIRD READING

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1118** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1213 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1213, Relating to the regulation of securities and fees and penalties related to regulation.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1213 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1213** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

SENATE BILL 1503 ON SECOND READING

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1503, Relating to pollution prevention and waste reduction assistance.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 1503 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **S.B. 1503** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Armbrister asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE
SENATE BILL 1379 ON SECOND READING**

On motion of Senator Parmer and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1379, Relating to the creation of judicial districts.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1379 ON THIRD READING**

Senator Parmer moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1379** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1206 ON SECOND READING**

Senator Santiesteban moved to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 1206, Relating to the establishment of a single state wide definition for "wetlands" in order to protect the rights of private property owners, and to provide consistency in the identification and classification of land features as wetlands.

The motion prevailed by the following vote: Yeas 22, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brown, Caperton, Carriker, Dickson, Edwards, Green, Haley, Henderson, Johnson, Leedom, Lyon, Montford, Ratliff, Santiesteban, Sims, Tejeda, Uribe, Whitmire, Zaffirini.

Nays: Brooks, Truan, Washington.

Absent: Glasgow, Harris, Krier, McFarland, Parker, Parmer.

The bill was read second time.

(Senator Carriker in Chair)

Senator Brooks offered the following amendment to the bill:

Amend **C.S.S.B. 1206** by adding at the end of Section 5 the following:

"If the state definition conflicts with the federal definition in any manner, the federal definition prevails."

The amendment was read and was adopted viva voce vote.

On motion of Senator Santiesteban and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1206 ON THIRD READING**

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1206** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Ratliff, Santiesteban, Sims, Tejeda, Uribe, Whitmire, Zaffirini.

Nays: Parmer, Truan, Washington.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4.

Yeas: Armbrister, Barrientos, Bivins, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Brooks, Parker, Parmer, Washington.

SENATE BILL 1693 ON SECOND READING

On motion of Senator Santiesteban and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1693, Relating to exclusion of certain territory from the El Paso County Lower Valley Water District Authority.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 1693 ON THIRD READING

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **S.B. 1693** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1248 WITH HOUSE AMENDMENT

Senator Johnson called **S.B. 1248** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - Rodriguez

Amend **S.B. 1248** as follows:

(1) On page 2, line 11 and 12, strike "felony of the third degree" and substitute "Class A misdemeanor"

The amendment was read.

On motion of Senator Johnson and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1248** viva voce vote.

SENATE BILL 1673 WITH HOUSE AMENDMENT

Senator Zaffirini called **S.B. 1673** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - Harris

Amend **S.B. 1673**, by striking all below the enacting clause and substituting the following:

SECTION 1. Section 51.095, Water Code, is amended to read as follows:

Sec. 51.095. MEETINGS. (a) The board shall hold regular meetings at the district office on a date selected by the board [~~the first Monday~~] in February, May, August, and November of each year [~~at 10 a.m.~~] and may hold meetings at other times when required for the business of the district.

(b) Not later than the fifth day before the date of a regular board meeting, the district either shall publish notice of the meeting in a newspaper with general circulation in the district or post notice of the meeting at five different public places within the district. The notice must include the time, date, and place of the meeting.

(c) Any person owning taxable property in the district may attend any meeting of the board and may present in an orderly manner matters for the board's consideration.

SECTION 2. Section 51.095(b), Water Code, as amended by this Act, applies only to a regular board meeting of a water control and improvement district that is held on or after the 10th day after the effective date of this Act.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to S.B. 1673.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1735 WITH HOUSE AMENDMENT

Senator Zaffirini called S.B. 1735 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - T. Smith

Amend S.B. 1735 as follows:

- (1) On page 1, line 8, between the period and "The", insert "(a)".
- (2) On page 1, line 21, at the end of the sentence, add "(b) It is the intent of the Legislature that the authority not exercise the power to levy and collect taxes."
- (3) On page 2, line 17, strike "Subject to approval at a confirmation election under Section 2.05 of this Act, a" and substitute "A".
- (4) On page 3, strike Section 2.05 and substitute "SECTION 2.05. CONFIRMATION ELECTION NOT REQUIRED. An election to confirm the creation of the authority is not required."
- (5) On page 12, line 9, add new Section 8.01 as follows:
"SECTION 8.01. INITIAL TRUSTEES. Not later than the 30th day after the effective date of this Act, the governing boards of the Crystal Clear Water Supply Corporation, the East Central Water Supply Corporation, the Green Valley Water Supply Corporation, and the Springs Hill Water Supply Corporation shall each appoint three persons to serve as the initial board. The initial board shall serve until their successors are appointed in May 1990 and have qualified for office. Successors to the initial trustees serve one-year terms."
- (6) On page 12, renumber Sections 8.01 and 8.02 as Sections 8.02 and 8.03 respectively.

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to S.B. 1735.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1027 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 1027** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - A. Hill

Amend **S.B. 1027** Section 1, by deleting Section 35.94(b) and replacing with the following:

(b) An offense under this section is punishable by:

(1) a fine of not more than \$250,000, imprisonment for not more than five years, or both, if:

(A) the offense involves at least 65 unauthorized recordings during a 180-day period; or

(B) the defendant has been previously convicted under this section;

(2) a fine of not more than \$250,000, imprisonment for not more than two years, or both, if the offense involves more than seven but less than 65 unauthorized recordings during a 180-day period; or

(3) a fine of not more than \$25,000, confinement in the county jail for not more than one year, or both, for any other offense.

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1027** viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 857 ON SECOND READING**

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 857, Relating to the continuation and functions of the Compact for Education Commissioners for Texas.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 857 ON THIRD READING**

Senator Green moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 857** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 174 ON SECOND READING**

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 174, Relating to regulation of operator service providers.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.H.B. 174 on page ___, line ___, by inserting new Sections 5 and 6 to read as follows and by renumbering subsequent sections accordingly:

SECTION 5. The Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) is amended by adding Section 96A to read as follows:

Sec. 96A. (a) The commission shall adopt and enforce rules establishing a statewide telecommunications relay access service for the hearing-impaired and speech-impaired using specialized communications equipment such as telecommunications devices for the deaf (TDD) and operator translations. The purpose of this section is to provide for the uniform and coordinated provision of the service on a statewide basis by one telecommunications carrier.

(b) On or before January 1, 1990, the commission shall adopt rules establishing a statewide telecommunications relay access service for the hearing-impaired and speech-impaired with the following provisions:

(1) the service shall provide the hearing-impaired and speech-impaired with access to the telecommunications network in Texas equal to that provided other customers;

(2) the service shall begin on or before September 1, 1990;

(3) the service shall consist of the following:

(A) switching and transmission of the call;

(B) verbal and print translations by either live or automated means between hearing-impaired and speech-impaired individuals who use TDD equipment or similar automated devices and others who do not have such equipment; and

(C) other service enhancements proposed by the carrier and approved by the commission;

(4) the calling or called party shall bear no charge for calls originating and terminating within the same local calling area;

(5) the calling or called party shall bear one-half of the total charges established by contract with the commission for intrastate interexchange calls;

(6) as specified in its contract with the commission, charges related to providing the service which are not borne by a calling or called party pursuant to Subdivisions (4) and (5) of this subsection shall be funded from the universal service fund;

(7) local exchange carriers shall not impose interexchange carrier access charges on calls which make use of this service and which originate and terminate in the same local calling area;

(8) local exchange carriers shall provide billing and collection services in support of this service at just and reasonable rates; and

(9) if the commission orders a local exchange company to provide for a trial telecommunications relay access service for the hearing-impaired or speech-impaired, all pertinent costs and design information from this trial shall be available to the general public.

(c) The commission shall allow telecommunications utilities to recover their universal service fund assessment related to this service through a surcharge which the utility may add to its customers' bills. The commission shall specify how the amount of the surcharge is to be determined by each utility. If a utility chooses to impose the surcharge, the bill shall list the surcharge as the "universal service fund surcharge."

(d) For the purpose of funding this service, the commission shall require that no less than 55 percent of such funds shall come from local exchange carriers.

(e) On or before April 1, 1990, the commission shall select the telecommunications carrier which will provide the statewide telecommunications relay access service for the hearing-impaired and speech-impaired. In awarding the contract for this service, the commission shall make a written award of the contract to the offerer whose proposal is the most advantageous to the state, considering price, the interests of the hearing-impaired and speech-impaired community in having access to a high quality and technologically advanced telecommunications system, and all other factors listed in the commission's request for proposals. The commission shall consider each proposal in a manner that does not disclose the contents of the proposal to competing offerers. The commission's evaluation of the proposals shall include:

(1) charges for the service;

(2) service enhancements proposed by the offerers;

(3) technological sophistication of the network proposed by the offerers; and

(4) The proposed commencement date for the service.

(f) The telecommunications carrier providing the service shall be compensated for providing such service at rates, terms, and conditions established in its contract with the commission. This compensation may include a return on the investment required to provide the service and compensation for unbillable and uncollectible calls placed through the service, provided that compensation for unbillable and uncollectible calls shall be subject to a reasonable limitation as determined by the commission.

(g) On or before September 15, 1989, the commission shall appoint an advisory committee to assist the commission in administering this section.

(1) The advisory committee shall be composed of:

(A) two deaf persons recommended by the Texas Association of the Deaf;

(B) one hearing-impaired person recommended by Self-Help for the Hard of Hearing;

(C) one hearing-impaired person recommended by the American Association of Retired Persons;

(D) one deaf and blind person recommended by the Texas Deaf/Blind Association;

(E) one speech-impaired person and one speech-impaired and hearing-impaired person recommended by the Coalition of Texans with Disabilities;

(F) two representatives of telecommunications utilities, one representing a nonlocal exchange utility and one representing a local exchange carrier, chosen from a list of candidates provided by the Texas Telephone Association;

(G) two persons, at least one of whom is deaf, with experience in providing relay services recommended by the Texas Commission for the Deaf; and

(H) two public members recommended by organizations representing consumers of telecommunications services.

(2) The commission shall appoint advisory committee members based on recommended lists of candidates submitted in accordance with Paragraph (F) of Subdivision (1) of this subsection.

(3) The advisory committee shall monitor the establishment, administration, and promotion of the statewide telecommunications relay access service and advise the commission in pursuing a service which meets the needs of

the hearing-impaired and speech-impaired in communicating with other users of telecommunications services.

(4) The terms of office of each member of the advisory committee shall be two years. A member whose term has expired shall continue to serve until a qualified replacement is appointed.

(5) The members of the advisory committee shall serve without compensation but shall be entitled to reimbursement at rates established for state employees for travel and per diem incurred in the performance of their official duties.

(6) The commission shall reimburse members of the advisory committee in accordance with Subdivision (5) of this subsection and shall provide clerical and staff support to the advisory committee, including a secretary to record the committee meetings.

(7) The commission's costs associated with the advisory committee shall be reimbursed from the universal service fund.

SECTION 6. Subsection (a), Section 98, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The commission shall adopt and enforce rules requiring local exchange companies to establish a universal service fund to assist local exchange companies in providing basic local exchange service at reasonable rates in high cost rural areas, to reimburse local exchange companies for revenues lost as a result of providing tel-assistance service under this Act, to reimburse the telecommunications carrier providing the statewide telecommunications relay access service for the hearing-impaired and speech-impaired as authorized in Section 96A of this Act, and to reimburse the Texas Department of Human Services and the Public Utility Commission of Texas for costs incurred in implementing the provisions of this article.

The amendment was read.

Senator Brooks offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend C.S.H.B. 174, SECTION 1, page 3, lines 10-12, by deleting all of said lines and inserting the following in lieu thereof: "(d) for the purpose of funding this service, the commission shall calculate from data provided by the service provider and the local exchange carriers on a quarterly basis a percentage of the relay access service messages that originate and terminate within a local calling area as compared to the total number of messages of the service by customers and require that no less than that percentage of such funds shall come from local exchange carriers. For the first quarter the service is provided, the commission may estimate the percentage of funding that shall come from local exchange carriers."

The amendment to Floor Amendment No. 1 was read and was adopted viva voce vote.

Question on the adoption of Floor Amendment No. 1 as amended, the amendment was adopted viva voce vote.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 174 ON THIRD READING**

Senator Edwards moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 174** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**NOTICE OF SESSION TO HOLD
LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Sims announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 8:00 a.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Finance might consider the following bills at 2:00 p.m. today:

H.B. 2277

H.B. 1356

H.B. 1948

H.B. 421

SENATE RULE 11.11 SUSPENDED

On motion of Senator Parker and by unanimous consent, Senate Rule 11.11 was suspended in order that the Conference Committee on **S.B. 1019** might meet at 3:30 p.m. today.

**MEMBERSHIP OF CONFERENCE COMMITTEE
ON SENATE BILL 479 REVISED**

On motion of Senator Barrientos and by unanimous consent, Senator Lyon will be replaced by Senator Dickson on the Conference Committee on **S.B. 479**.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Health and Human Services might consider the following bills this afternoon:

H.B. 3190

H.B. 18

SENATE RULE 11.11 SUSPENDED

On motion of Senator Santiesteban and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Natural Resources might consider **H.B. 1808** this afternoon.

RECESS

On motion of Senator Brooks, the Senate at 12:32 p.m. took recess until 2:15 p.m. today.

AFTER RECESS

The Senate met at 2:15 p.m. and was called to order by the President.

MESSAGE FROM THE HOUSE

House Chamber
May 22, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 115, Requesting the Speaker and Lieutenant Governor to create a special joint interim committee to study State regulation of proprietary schools.

H.C.R. 116, Requesting the Speaker and Lieutenant Governor to authorize a study regarding health care benefits for educators and the concept of a statewide program of health care for school districts.

H.C.R. 134, Honoring the life of Dr. Robert J. Terry and requesting the Texas Southern University board of regents to name a building in his honor.

H.C.R. 188, Recognizing the University of Houston-Clear Lake for their aerospace program.

H.C.R. 224, Requesting Congress to provide for the establishment and operation of a Veterans' Administration Hospital in the Rio Grande Valley of Texas.

H.C.R. 244, Directing the Dallas Area Rapid Transit Authority to take certain actions.

H.C.R. 265, Memorializing Congress to reconsider the surtax provision of the Medicare Catastrophic Coverage Act.

H.C.R. 266, Directing the Central Education Agency to develop an inservice training program on youth suicide.

S.C.R. 2, Creating a joint committee to select the Texas State Artists. (As substituted)

S.C.R. 49, Establishing a joint select committee to study the development and establishment of a four-year college at Laredo State University. (As substituted)

S.C.R. 66, Requesting certain professional schools to require instruction in industrial hygiene and safety, occupational medicine and occupational health nursing.

S.C.R. 70, Directing the State Department of Highways and Public Transportation to issue "U.S. Judge" plates to federal bankruptcy judges residing in Texas.

S.C.R. 132, Authorizing the Department of Agriculture to conduct a pilot project to collect and dispose pesticide wastes in Senate District 25.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILLS AND RESOLUTION ON FIRST READING

The following bills and resolution received from the House were read the first time and referred to the Committee indicated:

H.J.R. 36, To Committee on Intergovernmental Relations.
H.B. 44, To Committee on State Affairs.
H.B. 1689, To Committee on Finance.
H.B. 2803, To Committee on Economic Development.
H.B. 2864, To Committee on Finance.

REPORTS OF STANDING COMMITTEES

By unanimous consent, Senator Brooks submitted the following report for the Committee on Health and Human Services:

H.B. 3105
H.B. 3190
H.B. 3123
H.B. 3145
H.B. 3150
H.B. 3174

By unanimous consent, Senator Tejeda, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 1806

By unanimous consent, Senator Brooks submitted the following report for the Committee on Health and Human Services:

H.B. 3124

By unanimous consent, Senator Tejeda, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 18

By unanimous consent, Senator Parmer submitted the following report for the Committee on Intergovernmental Relations:

C.S.H.B. 1023

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 297 ADOPTED**

Senator Caperton called from the President's table the Conference Committee Report on **S.B. 297**. (The Conference Committee Report having been filed with the Senate and read on Thursday, May 18, 1989.)

On motion of Senator Caperton, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CO-SPONSOR OF HOUSE BILL 1

On motion of Senator Glasgow and by unanimous consent, Senator Lyon will be shown as Co-sponsor of **H.B. 1**.

**COMMITTEE SUBSTITUTE
HOUSE BILL 101 ON SECOND READING**

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 101, Relating to salaries of certain judges and justices; making an appropriation.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 101 ON THIRD READING**

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 101** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1, Present-not voting 1.

Nays: Washington.

Present-not voting: Edwards.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Edwards asked to be recorded as voting "Present-not voting" on the final passage of the bill.

**CONFERENCE COMMITTEE ON SENATE BILL 427
GRANTED PERMISSION TO MEET**

On motion of Senator Edwards and by unanimous consent, the Conference Committee on **S.B. 427** was granted permission to meet while the Senate was in session.

SENATE CONCURRENT RESOLUTION 167

Senator Brooks offered the following resolution:

WHEREAS, **H.B. 174** has been passed by the Senate and is now in the House, and there are certain corrections to be made therein; now, therefore, be it

RESOLVED, By the Senate of the State of Texas, the House of Representatives concurring, that the House is hereby respectfully requested to return **H.B. 174** to the Senate for further consideration.

The resolution was read.

On motion of Senator Brooks and by unanimous consent, the resolution was considered immediately and was adopted viva voce vote.

HOUSE BILL 799 ON SECOND READING

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 799, Relating to an emergency appropriation to the State Pension Review Board for administrative expenses. (Submitted by Governor as emergency matter)

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 799 ON THIRD READING

Senator Leedom moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 799** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1229 ON SECOND READING

On motion of Senator Haley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1229, Relating to certain unlawful methods of taking game and fish; providing penalties.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1229 ON THIRD READING

Senator Haley moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1229** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

GUESTS PRESENTED

The President introduced to the Senate his guests, seated at the President's Rostrum: the Honorable Mike Andrews, representing the Houston Congressional District 25, and the Honorable Tom Downing, a Member of the New York Congressional District.

These distinguished representatives were welcomed by the Senate.

COMMITTEE SUBSTITUTE HOUSE BILL 1 ON SECOND READING

Senator Lyon moved to suspend the regular order of business and Senate Rule 5.14 (Intent Calendar) to take up for consideration at this time:

C.S.H.B. 1, Relating to the reform of the workers' compensation system; to the creation, powers, and duties of the Texas Workers' Compensation Commission; to work safety; authorizing an appropriation; providing criminal and administrative penalties; and providing for taxes and fees.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Sims.

Absent: Harris, Henderson.

The bill was read second time.

Senator Lyon offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 1** as follows:

(1) On page 1, strike the preamble (lines 8-15) and substitute the following:

PREAMBLE; LEGISLATIVE INTENT

The Texas Workers' Compensation Act is remedial in nature. It is the intent of the legislature to carry forward determinations made under prior law except to the extent of any conflict with this Act.

- (2) On page 1, line 17, strike "11" and substitute "10".
- (3) On page 5, line 2, between "podiatry" and the period, insert ", who is licensed and authorized to practice".
- (4) On page 5, strike lines 20-26 and substitute the following:
 - (20) "Employer" means, unless otherwise specified, a person that makes a contract of hire or that employs one or more employees. The term includes a governmental entity.
- (5) On page 6, line 20, strike "physician" and substitute "doctor".
- (6) On page 7, line 5, strike "accidental injuries and".
- (7) On page 7, lines 2-3, strike "or mental".
- (8) On page 8, line 21, between "further" and "recovery", insert "material".
- (9) On page 9, strike lines 17-27 and substitute the following:
 - (35) "Occupational disease" means any disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, and such other diseases or infections as naturally result therefrom. The term includes damage or harm to the physical structure of the body that occurs as the result of repetitious physical traumatic activities extending over a period of time and arising in the course of employment; provided, that the date of the cumulative injury is the date incapacity was caused thereby. Ordinary diseases of life to which the general public is exposed outside of employment are not compensable, except where those diseases follow as an incident to an "occupational disease" or "injury" as those terms are defined by this Act.
- (10) On page 11, lines 17-18, strike "doing the usual tasks of a worker".
- (11) On page 18, line 3, strike "arbitration" and substitute "mediation".
- (12) On page 21, strike lines 11-13 and substitute the following:
 - (3) division of hearings; and
 - (4) division of self-insurance regulation.
- (13) On page 22, line 14, strike "Section 4.28" and substitute "Section 4.46".
- (14) On page 24, strike lines 3-6 and substitute the following:
 - (1) the crime victims compensation fund; or
 - (2) the division of self-insurance regulation.
- (15) On page 27, strike lines 20-25 and substitute the following:
 - (2) a legislative committee for legislative purposes; and
 - (3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 2.31(d) of this Act, if the request is provided to the commission.
- (16) On page 30, lines 5 and 6, strike "commission, research center, or any other" and substitute "commission or any other".
- (17) On page 33, lines 16 and 17, strike Subdivision (3) and substitute the following:
 - (3) "Motor carrier" means a person operating a motor vehicle over any public highway in this state for the purposes of providing transportation services

or contracting to provide those services. An owner-operator is an independent contractor.

(18) On page 59, line 12, strike "provide for" and substitute "obtain".

(19) On page 68, line 22, strike "under Section 4.17 of this Act".

(20) On page 73, between lines 24 and 25, insert a new Section 4.011 to read as follows:

SECTION 4.011. POLICY STATEMENT ON MENTAL TRAUMA INJURIES. It is the express intent of the legislature that nothing in this Act shall be construed to limit or expand recovery in cases of mental trauma injuries.

(21) On page 81, strike line 2 and substitute the following: "of 300 times if a six-day worker, or 260 times if a five-day."

(22) On page 81, line 7, strike the comma.

(23) On page 81, strike lines 9-10 and substitute the following: "average weekly wage consists of 300 times if a six-day worker, or 260 times if a five-day worker, the average daily wage or salary".

(24) On page 82, strike lines 11-22 and substitute the following:

(1)(A) for the first 26 weeks following the beginning date of incapacity for any compensable injury, but not to exceed beyond the date of maximum medical improvement unless the employee is totally incapacitated, (B) for all injuries for which lifetime income benefits are payable, and (C) for injuries resulting in death benefits, an amount equal to 100 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission, rounded to the nearest whole dollar amount divisible by seven; provided, that if maximum medical improvement occurs before the expiration of 26 weeks following the beginning date of incapacity and the employee claims total incapacity, the carrier shall have the right to an independent medical examination by a doctor of the carrier's choice; if, based on such medical examination and all other evidence the employee is found to be totally incapacitated and to have attained maximum medical improvement, then the benefits payable under (A) of this Subdivision (1) shall continue for the full 26 weeks; and

(2) for all other incapacity after August 31, 1988, the maximum weekly income benefit is \$238; provided, that if the annual average of the manufacturing production workers average weekly wage in this state exceeds by \$10 the average weekly wage for those workers in 1988, as determined by the Texas Employment Commission and published by that commission in its report on the average weekly wage, the maximum weekly benefit shall be increased by \$7 above the amounts specified in this section beginning with the commencement of the state fiscal year following the publication of the report; and provided that thereafter, each cumulative \$10 increase in the average weekly wage for manufacturing production workers in this state as annually determined and reported by the Texas Employment Commission shall increase cumulatively the maximum weekly benefit by an additional \$7 beginning with the commencement of the state fiscal year following the publication of the report.

(25) On page 83, strike lines 5-10 and substitute the following:

SECTION 4.12. MINIMUM WEEKLY BENEFITS. (a) Effective September 1, 1988, the minimum weekly benefit is \$40. If the annual average of the manufacturing production workers average weekly wage in this state exceeds by \$10 the average weekly wage for those workers in 1988, as determined by the Texas

Employment Commission and published by that commission in its report on the average weekly wage, the minimum weekly benefit shall be increased by \$1 above the amounts specified in this section beginning with the commencement of the state fiscal year following the publication of the report. Thereafter, each cumulative \$10 increase in the average weekly wage for manufacturing production workers in this state as annually determined and reported by the Texas Employment Commission shall increase cumulatively the minimum weekly benefit by an additional \$1 beginning with the commencement of the state fiscal year following the publication of the report.

(26) On page 84, line 4, strike "Section 4.25" and substitute "Section 4.26".

(27) On page 84, line 21, between "injury" and "is entitled", insert "and who has not attained maximum medical improvement".

(28) On page 85, line 21, strike "While" and substitute "If, after the employee has attained maximum medical improvement,".

(29) On page 85, line 27, strike "After" and substitute "If after".

(30) On page 86, line 1, strike "and while the" and substitute ", the".

(31) On page 91, line 11, strike "at least".

(32) On page 96, between lines 24 and 25, insert a new Section 4.441 to read as follows:

SECTION 4.441. EFFECT OF DISPUTE AS TO BENEFICIARY. On settlement of a case in which the insurance carrier admits liability for death benefits but a dispute exists as to the proper beneficiary or beneficiaries, the settlement shall be paid in periodic payments as provided by law, with a reasonable attorney's fee not to exceed 25 percent of the settlement. The attorney's fee shall be paid periodically and not in a lump sum.

(33) On page 99, lines 10-11, strike ", but not for the purpose of obtaining an impairment rating".

(34) On page 110, line 5, between "EMPLOYER" and the period, insert "; CLAIM FOR COMPENSATION".

(35) On page 111, between lines 9 and 10, insert a new Section 5.021 to read as follows:

SECTION 5.021. EFFECT OF FAILURE TO FILE CLAIM. An employee's failure to file a claim for compensation with the commission as required under Section 5.01(b) of this article relieves the employer and the employer's insurance carrier of liability under this Act unless:

- (1) good cause exists for failure to give notice in a timely manner; or
- (2) the employer or insurance carrier does not contest the claim.

(36) On page 112, between lines 16 and 17, insert a new Section 5.041 to read as follows:

SECTION 5.041. LIMITATION TOLLED. If the employer or insurance carrier has been given notice or has knowledge of an injury or death of an employee, and the employer or carrier fails, neglects, or refuses to file a report as required under Section 5.04 of this article, the limitation in Section 5.01 of this article with respect to the filing of a claim for compensation does not begin to run against the claim of the injured employee or the employee's beneficiaries who are entitled to compensation, or in favor of the employer or insurance carrier, until the report has been furnished as required under Section 5.04 of this article.

(37) On page 115, line 8, strike “at an earlier date” and substitute “before the date of filing of the notice”.

(38) On page 116, between lines 4 and 5, insert a new Section 5.24 to read as follows:

SECTION 5.24. MEDICAL DISPUTES AFTER JUDGMENT OR AWARD. Notwithstanding any other provision of this Act, no award of the commission and no judgment of a court having jurisdiction of a claim against an insurance carrier for the cost or expense of medical aid, hospital services, nursing, chiropractic services, medicines, or prosthetic appliances furnished to an employee under circumstances that create a liability for payment on the part of the carrier under this Act shall include in the award or judgment any cost of any such item that is not actually furnished to and received by the employee before the date of the award or judgment. The first such final award or judgment rendered on the claim is res judicata of the liability of the carrier for the cost or expense that could have been claimed up to the date of the award or judgment and of the issue that the employee's injury is subject to the provisions of this Act with respect to the items, but is not res judicata of the obligation of the carrier to furnish or pay for any such item after the date of the award or judgment. After the first such final award or judgment, the commission shall have continuing jurisdiction in the case to render successive awards to determine the liability of the carrier for the cost or expense of any such item actually furnished to and received by the employee not more than six months before the date of each successive award, until the carrier has fully discharged its obligation under this Act to furnish the medical aid, hospital services, nursing, chiropractic services, medicines, or prosthetic appliances to which the employee may be entitled; provided, that a claim for compensation must be filed with the commission in accordance with Section 5.01 of this article to make a claim for such compensation benefits, and the provisions of Article 6 of this Act apply to those claims.

(39) On page 122, line 13, strike “The” and substitute “Except as otherwise provided by this subsection, the”.

(40) On page 122, line 15, after the period insert: “On the mutual written agreement of the parties, the period for the scheduling of a mediation conference may be extended for an additional 30 days.”

(41) On page 127, line 11, after the period insert: “An arbitrator may not be an employee of the commission.”

(42) On page 128, line 3, strike “only”.

(43) On page 128, line 9, strike “and this appointment is final.” and substitute “. Each party is entitled to reject the arbitrator in the manner provided under Subsection (f) of this section.”.

(44) On page 132, line 4, strike “obtained knowledge” and substitute “knew or should have known”.

(45) On page 132, line 8, strike “an arbitrator's” and substitute “the arbitration”.

(46) On page 133, line 5, after the period insert: “On the mutual written agreement of the parties, the period for the scheduling of a contested case hearing may be extended for an additional 30 days.”.

(47) On page 248, line 25, strike “4.02(b)”,.

(48) On page 262, line 7, strike “, except Section 4.02(b)”.

(49) On page 265, line 21, strike "except Section 4.02(b)".

(50) On page 271, line 17, strike "POOL" and substitute "FACILITY".

(51) On page 271, line 19, strike "Pool" and substitute "Facility".

(52) On page 272, line 24, strike "are" and substitute "is".

The amendment was read.

On motion of Senator Lyon and by unanimous consent, Floor Amendment No. 1 was temporarily withdrawn.

Senator Lyon offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.H.B. 1 as follows:

(1) On pages 193 and 194, amend Section 13.08 by striking the new Article 5.55B, Insurance Code.

(2) On page 272, after line 27, insert a new Section 17.081 to read as follows:

SECTION 17.081. SMALL BUSINESS STUDY OF OPTIONAL DEDUCTIBLE POLICIES. (a) The Texas Worker's Compensation Commission shall conduct a study relating to the offering of policies providing for deductibles to small employers and shall report the results of the study to the 72nd Legislature. On the request of the commission, the State Board of Insurance shall assist the commission.

(b) The study conducted under Subsection (a) of this section must include a plan containing specific recommendations for the protection of employees from intimidation and securing the payment of compensation benefits up to the deductible amount directly from the insurance carrier.

(c) This section expires August 31, 1991.

The amendment was read and was adopted by the following vote: Yeas 22, Nays 9.

Yeas: Armbrister, Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Haley, Harris, Henderson, Johnson, Lyon, Montford, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Bivins, Brown, Glasgow, Krier, Leedom, McFarland, Ratliff, Sims, Tejeda.

Question recurring on the adoption of Floor Amendment No. 1, the amendment was adopted by the following vote: Yeas 25, Nays 5.

Yeas: Armbrister, Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Harris, Henderson, Johnson, Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Bivins, Brown, Krier, Leedom, Sims.

Absent: Haley.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 3

Amend Subsection (c), Section 2.01 of C.S.H.B. 1 by striking the phrase "with demonstrated experience in representing fellow wage earners regarding wages, hours, or conditions of employment".

The amendment was read.

On motion of Senator Ratliff and by unanimous consent, the amendment was withdrawn.

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 4

Amend Subsection (a) Section 4.11, C.S.H.B. 1 to read as follows:

“SECTION 4.11. MAXIMUM WEEKLY BENEFITS. (a) The maximum weekly benefit for income benefits is 100 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission.”

The amendment was read.

On motion of Senator Lyon, the amendment was tabled by the following vote: Yeas 28, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Leedom, Ratliff, Sims.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 3

Amend Subsection (c), Section 2.01 of C.S.H.B. 1 by striking the phrase “with demonstrated experience in representing fellow wage earners regarding wages, hours, or conditions of employment”.

The amendment was read.

On motion of Senator Lyon, the amendment was tabled by the following vote: Yeas 22, Nays 9.

Yeas: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Johnson, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Henderson, Krier, Leedom, Ratliff, Sims, Tejeda.

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 5

(1) Amend C.S.H.B. No. 1 by striking Sections 4.21-4.31 and substituting the following:

“SECTION 4.21. INCOME BENEFITS; DETERMINATION BY COMMISSION. (a) An employee is entitled to income benefits to compensate the employee for impairment or disability caused by the compensable injury.

(b) Except as otherwise provided by this Act, income benefits shall be paid on a weekly basis. Entitlement to income benefits under this chapter terminates on the death of the employee.

(c) The Commission shall adopt rules and guidelines for the determination of the existence and degree of an employee's impairment or disability. An employee's impairment rating is based on the percentage of physical impairment to the whole

body caused by the injury, modified to reflect the effects that the employee's age, education, and work experience may have on the employee's ability to obtain or retain substantial gainful employment. Modifications must be based on objective criteria. The Commission by rule shall adopt formulas relating to modifications of impairment for the purposes of this Act. All determinations of impairment and disability must be made in accordance with the rules, guidelines, and formulas adopted by the Commission.

SECTION 4.22. TEMPORARY DISABILITY INCOME BENEFITS. (a) An employee who is totally or partially disabled by a compensable injury is entitled to temporary disability income benefits beginning on the eighth day of disability. On the initiation of compensation as otherwise provided by this Act, the insurance carrier shall pay temporary disability income benefits as provided by this section.

(b) Temporary disability income benefits continue until the earlier of:

- (1) the employee reaching maximum medical improvement; or
- (2) the expiration of 401 weeks.

(c) Except as provided by Subsection (e) of this section, temporary disability income benefits are payable at the rate of $66\frac{2}{3}$ percent of the employee's average weekly wage, not to exceed the maximum weekly benefit specified by this Act.

(d) If the disability continues for at least 28 days, the employee is also entitled to temporary disability income benefits for the first seven days of disability.

(e) An employee who returns to work or is offered a position of employment by the employer, or any other employer, that the treating health care practitioner has certified the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, but who has not reached maximum medical improvement, is entitled to temporary disability income benefits at the rate of $66\frac{2}{3}$ percent of the difference between the employee's average weekly wage and the average weekly earnings in the position that the employee is performing or has been offered.

SECTION 4.23. IMPAIRMENT INCOME BENEFITS. (a) After the employee has been certified by a health care practitioner as having reached maximum medical improvement, the certifying practitioner shall evaluate the condition of the employee, using the guidelines adopted by the Commission, to determine the percentage of impairment caused to the employee by the injury. If the certification and evaluation are performed by a health care practitioner other than the employee's treating practitioner, the certification and evaluation shall be submitted to the treating practitioner and the treating practitioner shall indicate agreement or disagreement with the certification and evaluation. The certifying health care practitioner shall issue a written report to the Commission, the employee, and the insurance carrier certifying that maximum medical improvement has been reached and stating the percentage of impairment. The insurance carrier shall pay the employee impairment income benefits based on that percentage of impairment as modified under Section 4.41(c) of this Act or, if the carrier disputes the percentage of impairment, based on its assessment of the correct percentage.

(b) An employee's entitlement to impairment income benefits begins the day after the employee reaches maximum medical improvement and continues until the earliest of:

- (1) the death of the employee;
- (2) the expiration of a period computed at the rate of three weeks for each percentage point of impairment as modified under Section 4.21 of this Act, but not to exceed 300 weeks; or
- (3) the expiration of 401 weeks of receipt of all income benefits combined.

(c) The insurance carrier shall begin to pay the impairment income benefits not later than the fifth day after the date on which the carrier receives the health care practitioner's report.

(d) If the percentage of impairment is disputed, the Commission shall direct the employee to be examined by a designated health care practitioner selected by the mutual agreement of the parties. If the parties are unable to agree on a designated health care practitioner, the Commission may direct the employee to be examined by a designated health care practitioner selected by the Commission. The designated health care practitioner shall report to the Commission in writing. The Commission shall base the award of impairment income benefits on the report of the designated health care practitioner.

(e) Impairment income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 4.28 of this Act.

SECTION 4.24. EXTENDED DISABILITY INCOME BENEFITS. (a) During the period that impairment income benefits are paid, the insurance carrier shall file written reports with the Commission that specify the employment status of the employee at six-month intervals and as of the 60th day before the date on which the impairment income benefits are scheduled to end. The Commission may order any evaluations of the employee considered necessary by the Commission to determine:

(1) the employee's ability to perform the functions reasonably required for employment; and

(2) the reasons for any extended unemployment.

(b) An employee is eligible for consideration for an extension of income benefits as provided by this section if the employee:

(1) as of the date of the payment of the final weekly impairment income benefit and because of continued disability has:

(A) not returned to employment; or

(B) returned to employment at not more than 30 percent of the employee's pre-injury wage; and

(2) has been eligible for and has received impairment income benefits for at least 104 weeks.

(c) The Commission may order the payment of extended disability income benefits to an employee determined by the Commission to meet the requirements imposed under Subsection (b) of this section. The Commission may order an initial payment of extended disability income benefits for a period not to exceed 52 weeks. At the expiration of each 52-week period thereafter, the Commission shall reevaluate the condition of the employee and may order the continued payment of extended disability income benefits for an additional 52-week period until the combined duration of the temporary disability income benefits, the impairment income benefits, and the extended disability income benefits received by that employee equals 600 weeks.

(d) Extended disability income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 4.29 of this Act.

SECTION 4.25. LIFETIME DISABILITY INCOME BENEFITS. (a) Income benefits for disability shall be paid until the death of the employee for:

(1) total and permanent loss of sight in both eyes;

(2) loss or total loss of use of both feet at or above the ankle;

(3) loss or total loss of use of both hands at or above the wrist;

(4) loss or total loss of use of one foot at or above the ankle and the loss of one hand at or above the wrist;

(5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and leg; or
(6) an injury to the skull resulting in incurable insanity or imbecility.

(b) Lifetime disability income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit provided by Section 4.48 of this Act.

SECTION 4.26. ADVANCE OF BENEFITS BASED ON HARDSHIP. (a) The Commission may grant an employee who is suffering financial hardship advances as provided by this Act against the amount of income benefits to which the employee may be entitled.

(b) An employee who desires an advance shall apply to the Commission on a form prescribed by the Commission describing the grounds for the advance.

(c) An advance under this section may not exceed an amount equal to four times the state average weekly wage as determined by the Texas Employment Commission. The Commission may not grant more than two advances to a particular employee based on the same injury.

SECTION 4.27. CONTINUATION OF WAGES. (a) After an injury and during the time that the insurance carrier is not paying benefits, the employer may continue to pay the employee's wages or may initiate weekly payments to the employee.

(b) If the injury is found compensable and the carrier initiates compensation, the insurance carrier shall reimburse the employer for the amount of compensation to which the employee was entitled under this Act during the period that the insurance carrier was not making payments and the employer continued to pay the employee's wages or made weekly payments to the employee.

(c) The employer shall notify the Commission and the insurance carrier on forms prescribed by the Commission of the initiation of and the amount of payments made under this section.

(d) Such employer payments shall not be construed as an admission of compensability and shall not affect the payment of benefits from any other source.

SECTION 4.28. AVERAGE WEEKLY WAGE. (a) Except as otherwise provided by this section, the average weekly wage of an employee shall be computed as of the date of the compensable injury and equals the quotient of the amount of wages paid in the 13 consecutive weeks immediately preceding the injury divided by 13.

(b) If the employee has worked for the employer for fewer than 13 weeks immediately preceding the injury, or if the wage at the time of injury has not been fixed or cannot be determined, the average weekly wage equals the usual wage that the employer pays a similar employee for similar services or that are paid in that vicinity for the same or similar services provided for remuneration taking into account the number of hours normally worked per week.

(c) In this subsection, "part-time employee" means an employee who, at the time of the compensable injury, was working less than the full-time hours or full-time workweek of a similar employee in the same employment, whether for the same or a different employer. The average weekly wage of a part-time employee who has voluntarily elected to limit the employee's work to part-time employment as a regular course of that employee's conduct shall be computed as provided by Subsections (a) and (b) of this section. For all other part-time employees, the average weekly wage shall be computed for the purpose of determining impairment income benefits, extended disability income benefits, lifetime income benefits, and death benefits as follows:

(1) if the employee has worked for the employer for at least 13 weeks immediately preceding the compensable injury, the average weekly wage equals the

quotient of the amount of wages paid in the 13 consecutive weeks immediately preceding the injury divided by 13 and adjusted to the weekly wage level the employee would have attained by working a 40-hour week at the same rate of pay; and

(2) if the employee has worked for the employer for fewer than 13 weeks immediately preceding the injury, the average weekly wage equals the weekly wage that the employer pays a similar employee for similar services in full-time employment or that are paid in that vicinity for the same or similar services provided for compensation in full-time employment.

(d) In this subsection, "seasonal employee" means an employee who, as a regular course of that employee's conduct, engages in seasonal or cyclical employment that does not continue throughout the entire year. The average weekly wage of a seasonal employee shall be computed for the purpose of determining temporary disability income benefits as provided by Subsections (a) and (b) of this section, adjusted as often as necessary to reflect the wages the employee could reasonably have expected to earn during the period of temporary disability. The average weekly wage of a seasonal employee shall be computed for the purpose of determining impairment income benefits, extended disability income benefits, lifetime income benefits, or death benefits by dividing the amount of total wages earned by the employee during the 12 months immediately preceding the injury by 50. If, for good and sufficient reasons as determined by the Commission, it is impracticable to compute the average weekly wage for a seasonal employee as provided by this subsection, the Commission shall compute the average weekly wage as of the time of the injury in a manner that is fair and just to both parties.

(e) The average weekly wage for an employee who is a minor, apprentice, trainee, or student at the time of the injury, whose employment or earnings at the time of the injury are limited primarily because of apprenticeship, continuing formal training, or education intended to enhance the employee's future wages, and whose wages would reasonably be expected to change, based on a change of employment during the period in which impairment income benefits, extended disability income benefits, lifetime income benefits, or death benefits are payable, shall be adjusted to reflect the level of expected wages during that period for the purpose of computing those benefits. The adjustment shall not consider expected wage levels for a period occurring more than three years after the date of the injury.

(f) To expedite the payment of income benefits, the Commission may adopt rules establishing a presumption that the employee's last paycheck accurately reflects the employee's usual wage, or establishing other reasonable presumptions relating to the wages earned by an employee.

(g) If the methods adopted under Subsections (a) and (b) of this section cannot be applied, the Commission may determine the employee's average weekly wage by any method that it considers fair, reasonable, and consistent with the methods established under this section.

SECTION 4.29. MAXIMUM WEEKLY BENEFITS. (a) The maximum weekly benefit for temporary disability income benefits or lifetime disability income benefits is 100 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission. The maximum weekly benefit for extended disability income benefits is $66\frac{2}{3}$ percent of that average weekly wage.

(b) The maximum weekly benefit for impairment income benefits is 75 percent of the maximum weekly benefit for temporary disability income benefits.

(c) The Commission shall determine the maximum weekly income benefit for the succeeding fiscal year not later than September 1 of each year. The Commission shall round the maximum to the nearest whole dollar.

(d) The maximum weekly benefit in effect on the date of the injury is applicable for the entire period during which income benefits are payable.

SECTION 4.30. CONTRIBUTING INJURY. (a) On the written request of the insurance carrier, the Commission may order that income benefits for impairment be reduced to the extent of a documented impairment that results from an earlier compensable injury affecting the same body part.

(b) The Commission shall consider the cumulative impact of the two injuries on the employee's overall impairment in determining a reduction under this section.

(c) If the combination of two injuries results in an injury compensable under Section 4.25 of this Act, the benefits for that injury shall be paid as otherwise provided by this Act.

SECTION 4.31. OFFSETS. (a) To ensure that the amount received by an employee in benefits under multiple employer sponsored disability benefit programs or public disability benefit programs does not exceed the employee's net average weekly wage before the injury, adjusted for inflation, the Commission may order, on a written request from the insurance carrier, that impairment income benefits or extended disability income benefits be reduced to the extent that the employee receives:

(1) Commission approved disability benefits for the injury from a source other than workers' compensation or social security; or

(2) social security retirement benefits.

(b) A reduction under this section is calculated on the after-tax value of the workers' compensation benefits and the offsetting benefits.

(c) An offset under this section does not reduce or eliminate a carrier's liability for continuing medical benefits.

(d) The Commission may not order a reduction under this section based on a disability program to which the employee has contributed.

SECTION 4.32. COMMUTING OF IMPAIRMENT INCOME BENEFITS. (a) Impairment income benefits may be commuted as provided by this section. Only impairment income benefits may be commuted. A commutation of impairment income benefits must be approved by the Commission.

(b) The parties may agree to a commutation of impairment income benefits if the employee:

(1) has returned to substantial gainful employment and has worked for at least six months; and

(2) has not required or obtained medical treatment calculated and intended to promote final recovery from the injury for at least three months.

(c) The parties shall reduce the commutation agreement to writing and shall submit the agreement to the Commission for its approval. The Commission shall approve the agreement if the Commission determines that the agreement meets the requirements established under Subsection (b) of this section and is in the best interest of the employee.

(d) Impairment income benefits that are commuted under this section are subject to discounting for present payment at four percent, compounded annually."

(2) Amend Section 1.03 by adding a new definition, appropriately numbered, to read as follows:

"Impairment" means any anatomic or functional abnormality or loss existing after maximum medical improvement that results from the compensable injury and is reasonably presumed to be permanent."

The amendment was read.

On motion of Senator Lyon, the amendment was tabled by the following vote: Yeas 20, Nays 11.

Yeas: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Haley, Harris, Johnson, Lyon, Montford, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Glasgow, Henderson, Krier, Leedom, McFarland, Ratliff, Sims, Tejada.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 6

Amend Section 4.31, C.S.H.B. 1 to read as follows:

"SECTION 4.31. SETTLEMENTS. (a) Income benefits may be commuted as provided by this section. Only income benefits may be commuted. A commutation of income benefits must be approved by the Commission.

"(b) The parties may agree to a commutation of income benefits if the employee:

(1) has returned to substantial gainful employment and has worked for at least six months; and

(2) has not required or obtained medical treatment calculated and intended to promote final recovery from the injury for at least three months.

"(c) The parties shall reduce the commutation agreement to writing and shall submit the agreement to the Commission for its approval. The Commission shall approve the agreement if the Commission determines that the agreement meets the requirements established under Subsection (b) of this section and is in the best interest of the employee.

"(d) Income benefits that are commuted under this section are subject to discounting for present payment at four percent, compounded annually."

The amendment was read.

On motion of Senator Lyon, the amendment was tabled by the following vote: Yeas 19, Nays 12.

Yeas: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Harris, Johnson, Lyon, Montford, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Glasgow, Haley, Henderson, Krier, Leedom, McFarland, Ratliff, Sims, Tejada.

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 7

(1) Amend C.S.H.B. 1 by striking Sections 6.41-6.52 and substituting the following:

"SECTION 6.41. CONTESTED CASE HEARING. (a) A party to a claim for which a benefit review conference is held and for which the claimant does not elect mediation and arbitration or a party eligible to proceed directly to a contested case hearing is entitled to a contested case hearing. If a benefit review conference is held, the hearing may not consider the issues resolved at the benefit review conference and may not consider issues not raised at the benefit review conference except by consent of the parties or unless the Commission determines that good cause existed for not considering an issue at the benefit review conference. Unless the Commission determines that good cause exists for a longer period, the party must request the hearing in writing not later than the 52nd day after the benefit review conference report is filed with the director of the hearings division and sent to the parties.

(b) A contested case hearing shall be conducted by a division hearings officer but may not be conducted by the same person who conducted a benefit review conference on the claim. Except as otherwise provided by this section, the hearing shall be conducted in accordance with Sections 13, 14, 15, and 17, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Unless the hearings officer determines that good cause exists for the selection of a different location, a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence.

(c) The hearings officer shall issue a written decision that includes findings of fact and conclusions of law and shall file the decision with the division not later than the 15th day after the date on which the hearing is concluded. The division shall notify each party in writing of the decision not later than the seventh day after the date on which the decision of the hearings officer is received by the division.

(d) The decision of the hearings officer is final in the absence of a timely appeal by a party and is binding during the pendency of an appeal except as to nonessential medical services.

SECTION 6.42. REVIEW BY AGENCY APPEALS PANEL. (a) A party that desires to appeal the decision of the hearings officer shall file a written appeal request with the hearings division not later than the 37th day after the date on which the decision of the hearings officer is filed with the director of the hearings division, and shall on the same date serve a copy of the appeal request on the other party. The respondent party shall file a written response with the division not later than the 30th day after the date on which the appeal request is served, and shall on the same date serve a copy of the response on the appellant party.

(b) An appeal request or response must clearly and concisely rebut or support the decision of the hearings officer and must cite statutes, case law, and evidence in support of the party's position.

(c) The division director shall assign the appeal to an appeals panel.

(d) The appeals panel shall consider:

- (1) the record developed at the contested case hearing; and
- (2) the written appeal and response filed with the division.

(e) The appeals panel may consider any new evidence presented to the panel by a party and may allow oral argument.

(f) The appeals panel may:

- (1) affirm the decision of the hearings officer;
- (2) reverse that decision and render a new decision; or
- (3) reverse that decision and remand the claim to the hearings officer

for further consideration and development of evidence. (g) The appeals panel shall issue its decision in writing not later than the 15th day after the date on which the appeal is heard by the panel and shall file a copy of the decision with the division director.

(h) The decision of the appeals panel is final in the absence of a timely appeal by a party for judicial review and is binding during the pendency of an appeal.

SECTION 6.43. JUDICIAL REVIEW. (a) A party who has exhausted all administrative remedies available under this article and who is aggrieved by a final decision of an agency appeals panel is entitled to seek judicial review under this section.

(b) Proceedings for judicial review are instituted by filing a petition not later than the 30th day after the date on which the final decision of the appeals panel is filed with the division director. The petition must be filed in district court in the county where the employee resides or where the injury occurred. A copy of the petition must be served on the board and on all parties of record in the proceedings before the appeals panel.

(c) Except as otherwise provided by this section, judicial review shall be conducted in the manner provided for judicial review of a contested case under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) Judicial review conducted under this article is governed by the substantial evidence rule.

SECTION 6.44. CONTINUATION OF BOARD JURISDICTION. The Commission retains jurisdiction of a workers' compensation claim during an appeal of a ruling on any disputed issue relating to the claim. The Commission may not modify, suspend, or revoke a final order of the Commission while such order is on appeal, except on a showing of a change of condition, mistake, or fraud and within 12 months of an order denying compensation and within the compensation period for other orders of the Commission.

SECTION 6.45. EXPEDITED PROCEDURES. The Commission by rule shall provide for expedited benefit review conferences, contested case hearings, or review by an agency appeals panel in cases in which compensability is in dispute."

(2) Renumber Sections 6.53 and 6.54 as Sections 6.46 and 6.47, respectively.

The amendment was read.

On motion of Senator Lyon, the amendment was tabled by the following vote: Yeas 21, Nays 10.

Yeas: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Harris, Johnson, Krier, Lyon, Parker, Parmer, Santiesteban, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Haley, Henderson, Leedom, McFarland, Montford, Ratliff, Sims.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 8

Amend **C.S.H.B. 1** as follows:

On page 29, line 18 after "distributes", strike "confidential information" and substitute "information which is confidential under this chapter".

On page 29, line 22 after "information" insert "which is confidential under this chapter".

The amendment was read and was adopted viva voce vote.

On motion of Senator Lyon and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by the following vote: Yeas 22, Nays 9.

Yeas: Armbrister, Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Haley, Harris, Johnson, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Bivins, Brown, Glasgow, Henderson, Krier, Leedom, Ratliff, Sims, Tejeda.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1 ON THIRD READING**

Senator Lyon moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Armbrister, Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Bivins, Brown, Krier, Leedom, Sims, Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTES

Senators Sims, Bivins, Ratliff, Glasgow, Brown and Krier asked to be recorded as voting "Nay" on the final passage of the bill.

MESSAGE FROM THE HOUSE

House Chamber
May 22, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 167, Authorizing the chief clerk of the House to return **H.B. 174** to the Senate for further consideration.

H.C.R. 287, Recognizing April 23, 1989, as Chelsea Elizabeth Holman Day in Texas.

H.C.R. 288, Honoring the 143rd Infantry Regiment and the 143rd Infantry Association.

The House has refused to concur in Senate amendments to **H.B. 2335** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Hightower, Chair; Granoff, Telford, S. Johnson, Williamson.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 427**. The following have been appointed on the part of the House: Oakley, Chair; Blackwood, Berlanga, Madla, R. Lewis.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1019**. The following have been appointed on the part of the House: Glossbrenner, Chair; Rudd, Edge, Colbert, Schoolcraft.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 452**. The following have been appointed on the part of the House: P. Hill, Chair; T. Smith, A. Smith, Gibson, Parker.

S.B. 1000, Relating to apportioning franchise taxes. (As amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

**CONFERENCE COMMITTEE REPORT
SENATE BILL 191**

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 22, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 191** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN
WHITMIRE
DICKSON
CARRIKER
HALEY

On the part of the Senate

TALLAS
GAVIN
TAYLOR
CAVAZOS
COUNTS

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to prohibited provisions in automobile rental agreements; providing civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 9026, Revised Statutes, is repealed.

SECTION 2. Title 132, Revised Statutes, is amended by adding a new Article 9026 to read as follows:

Art. 9026. AUTOMOBILE RENTAL AGREEMENTS

Sec. 1. SCOPE. This article applies to persons and organizations renting private passenger automobiles from locations in this state.

Sec. 2. PURPOSE. The purpose of this article is to prohibit rental companies from imposing certain liabilities on persons who rent automobiles subject to certain stated exceptions in connection with private passenger automobile rental agreements.

Sec. 3. DEFINITIONS. In this Act:

(1) "Rental company" means any person or entity that is in the business of renting private passenger automobiles to the public. The term does not include a person or entity who holds a license issued by the Texas Motor Vehicle Commission pursuant to the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes) and whose primary business activity is not the renting of private passenger automobiles.

(2) "Renter" means a person or entity that obtains the use of a private passenger automobile from a rental company under terms of a rental agreement.

(3) "Rental agreement" means a written agreement stating the terms and conditions governing the use of a private passenger automobile provided by a rental company.

(4) "Damage" means any damage or loss to a rented vehicle, including theft or loss of use and any cost and expense incident to that damage or loss regardless of any negligence that might be involved in the damage or loss.

(5) "Private passenger automobile" means a motor vehicle of the private passenger type, including passenger vans, minivans, 4-wheel drive utility-type vehicles, pickup trucks, and panel trucks that are primarily intended for private use.

(6) "Authorized driver" means:

(A) the person to whom a private passenger automobile is rented;

(B) the spouse of a person renting a private passenger automobile if the spouse is a licensed driver and meets the rental company's minimum age requirements;

(C) the employer or coworker of a person renting the private passenger automobile if the employer or coworker is engaged in business activity with the person to whom the automobile is rented and is a licensed driver and satisfies the rental company's minimum age requirements;

(D) a person who operates a rented private passenger automobile during an imminent life-threatening emergency or while parking motor vehicles at a commercial establishment; or

(E) a person who is expressly listed as an authorized driver by the rental company on the rental agreement.

(7) "Speed contest" means a competition or race formally or otherwise arranged between the driver of a private passenger automobile and any other vehicle whether or not for compensation but does not include a private passenger automobile being driven outside the competition by a driver who exceeds the legal speed limit lawfully or unlawfully.

(8) "Loss damage waiver" means a rental car company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss or use of the rented vehicle, or any storage, impound, towing, or administrative charges.

Sec. 4. PROHIBITED PRACTICES AND REQUIRED NOTICE. (a) A rental company in a rental agreement may not offer for sale in this state a loss damage waiver under which the rental company agrees to limit the amount of the renter's liability to the rental company unless the renter agrees to the loss damage waiver in writing at the time the rental agreement is executed. A rental company is not required to exclude any type of damage from its loss damage waiver. However, should a rental company choose to exclude some types of damage, the agreement may contain only the following exclusions and no others:

(1) damage is caused intentionally by an authorized driver or as a result of wilful and wanton misconduct of an authorized driver;

(2) damage arises out of any authorized driver's operation of a private passenger automobile while legally intoxicated or under the influence of any illegal drug or chemical as defined or determined under the law of the state in which the damage occurred;

(3) damage is caused while the authorized driver is engaged in a speed contest;

(4) the rental transaction is based on information supplied by the renter with the intent to defraud the rental company;

(5) damage arises out of the use of the private passenger automobile while committing or otherwise engaged in a criminal act in which the automobile usage is substantially related to the nature of the criminal activity;

(6) damage arises out of the use of the private passenger automobile to transport persons or property for hire;

(7) damage arises out of the use of the private passenger automobile outside the United States or Canada unless the use is specifically authorized by the rental agreement;

(8) damage arises out of the use of the private passenger automobile while towing or pushing anything; or

(9) damage is caused to the vehicle while it is being driven other than on a regularly maintained roadway.

(b) Security or a deposit for damage in any form may not be required or requested by the rental company during the rental period or pending resolution of any dispute.

(c) Each rental car agreement shall contain a provision whereby the rental customer can indicate in writing whether he is accepting or rejecting the loss damage waiver.

(d) Each rental car agreement offered for sale in this state shall contain the following provisions on the face of the agreement in not less than 12-point boldfaced type:

"(1) The Texas personal automobile insurance policy provides coverage for the legal liabilities of the policyholder in connection with the loss of or damage to a rented vehicle except for damages caused intentionally. Therefore, it may not be necessary for the renter to purchase the loss damage waiver.

"(2) The purchase of a loss damage waiver is not mandatory.

"(3) The loss damage waiver is not insurance coverage."

(e) The cost of the loss damage waiver shall be reasonable in relation to the expenses of the rental car company arising from the direct costs for repair or replacement of vehicles for which no other sources of indemnification are provided.

(f) No oral or written representations shall be made by any employee or agent of the rental car company which contradict the provisions of this Act. No coercive language or action shall be used by any employee or agent of the rental car company in an attempt to persuade a rental customer to purchase the loss damage waiver. For the purposes of this subsection, if the rental customer has declined the waiver by signing the appropriate blank on the rental agreement, further statements or questions by an employee or agent of the rental company making reference to the loss damage waiver shall be deemed coercive.

Sec. 5. PENALTY. (a) A rental company that violates this article is subject to a civil penalty in an amount of at least \$500 and not to exceed \$1,000 for each act of violation.

(b) A county or district attorney or the state attorney general may institute and conduct a suit in the name of the state to recover the civil penalty, injunctive relief, or both the civil penalty and injunctive relief.

(c) Any person or entity injured or threatened with injury by a violation of this Act may seek injunctive relief against any company or person who violates or threatens to violate the provisions of this Act.

SECTION 3. This Act shall not apply to rental car agencies who receive 90 percent or more of their revenue directly from insurance carriers.

SECTION 4. Section 1 of this Act takes effect August 31, 1989.

SECTION 5. Section 2 of this Act takes effect September 1, 1989, and applies to the rental of private passenger automobiles by rental companies under rental agreements executed on and after September 1, 1989. Rental of private passenger automobiles by rental companies under rental agreements executed before September 1, 1989, are governed by the law as it existed at the time the parties executed the rental agreement, and that law is continued in effect for that purpose.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT
HOUSE BILL 248**

Senator Parker submitted the following Conference Committee Report:

Austin, Texas
May 22, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 248** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER
CAPERTON
GREEN

STILES
JONES
CONLEY
CAMPBELL
WILSON

On the part of the Senate

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 338**

Senator Caperton called from the President's table the Conference Committee Report on **S.B. 338**. (The Conference Committee Report having been filed with the Senate and read on Saturday, May 20, 1989.)

On motion of Senator Caperton and by unanimous consent, the Senate refused to adopt the Conference Committee Report on **S.B. 338**, and discharged the conferees.

**CONFERENCE COMMITTEE ON
SENATE BILL 338 APPOINTED**

On motion of Senator Caperton and by unanimous consent, the appointment of a new Conference Committee on **S.B. 338** was requested.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 338** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Caperton, Chairman; Johnson, Montford, McFarland and Washington.

**CONFERENCE COMMITTEE ON SENATE BILL 985
DISCHARGED**

On motion of Senator Caperton and by unanimous consent, the Senate conferees on **S.B. 985** were discharged.

Question - Shall the Senate concur in the House amendment to **S.B. 985**?

SENATE BILL 985 WITH HOUSE AMENDMENT

Senator Caperton moved to concur in the House amendment to **S.B. 985**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**VOTE ON FINAL PASSAGE OF
HOUSE BILL 174 RECONSIDERED**

On motion of Senator Brooks and by unanimous consent, the vote by which **H.B. 174** was finally passed was reconsidered.

Question - Shall **H.B. 174** be finally passed?

**COMMITTEE SUBSTITUTE
SENATE BILL 1763 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1763, Relating to confidentiality and privilege requirements for certain information relating to impaired physicians.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1763 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1763** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Finance might consider the following bills at 9:00 a.m. tomorrow:

H.B. 2575

H.B. 1425

SENATE RULE 11.11 SUSPENDED

On motion of Senator McFarland and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Criminal Justice might consider **H.B. 2634** tomorrow.

CONGRATULATORY RESOLUTIONS

S.R. 701 - By Carriker: Commending Foy Charles Wallace, Mayor of Gunter, Texas, for his dedicated service to the citizens of his community and the State.

S.R. 702 - By Armbrister: Extending congratulations to the Gonzales High School girls golf team on winning the State 3A championship.

S.R. 703 - By Barrientos: Extending congratulations to Frank Wright of Austin on being honored as the Public Citizen of the Year by the Austin Unit of the National Association of Social Workers/Texas.

S.R. 704 - By Barrientos: Extending congratulations to National Image, Incorporated, on its 17th annual national training conference and convention as it continues to serve the members of the Hispanic community.

S.R. 705 - By Barrientos: Commending the Boating Trades Association of Texas for sponsoring the Texas Lakeshore Cleanup Project.

S.R. 706 - By Barrientos: Commending Michael Louis Gutierrez, M.D., for his superb academic and personal achievement.

S.R. 707 - By Barrientos: Commending Mrs. Vivien Richard for her superb contributions to the educational system of Texas and extending best wishes to her for a rich and rewarding retirement.

RECESS

On motion of Senator Brooks, the Senate at 5:20 p.m. took recess until 8:00 a.m. tomorrow.

SEVENTIETH DAY (Continued) (Tuesday, May 23, 1989)

AFTER RECESS

The Senate met at 8:00 a.m. and was called to order by Senator Sims.

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

C.S.S.B. 1712

HOUSE RESOLUTIONS ON FIRST READING

The following resolutions received from the House were read the first time and referred to the Committee indicated:

- H.C.R. 115**, To Committee on Administration.
- H.C.R. 116**, To Committee on Administration.
- H.C.R. 134**, To Committee on Education.
- H.C.R. 188**, To Committee on Education.
- H.C.R. 224**, To Committee on Health and Human Services.
- H.C.R. 229**, To Committee on Health and Human Services.
- H.C.R. 244**, To Committee on Intergovernmental Relations.
- H.C.R. 265**, To Committee on Health and Human Services.
- H.C.R. 266**, To Committee on Education.

MESSAGE FROM THE HOUSE

House Chamber
May 23, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following: